

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE UNITED STATES OF AMERICA,
Plaintiff in Error,
vs.
NORTHERN PACIFIC RAILWAY COMPANY,
a Corporation,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of
the Western District of Washington, Northern Division.

FILED
SEP 13 1921
U. S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Answer.....	20
Bill of Exceptions and Order Allowing Same...	36
Certificate of Clerk U. S. District Court to Transcript of Record.....	361
Citation and Admission of Service.....	366
Complaint.....	2
Demurrer.....	30
Election as to Printing Record.....	357
Instructions by the Court.....	293
Judgment.....	323
Names and Addresses of Attorneys of Record..	1
Order Allowing Writ of Error.....	356
Order Extending Time to and Including July 25, 1923, to File Bill of Exceptions.....	353
Order Extending Time to and Including September 1, 1923, to File Record and Docket Cause.....	368
Order Overruling Demurrer.....	31
Order Re Transmission of Original Exhibits..	360
Petition for Writ of Error.....	354
Plaintiff's Assignments of Error.....	325
Praecipe for Transcript of Record.....	358
Reply.....	32

	Index.	Page
Stipulation Extending Time to and Including July 25, 1923, to File Bill of Exceptions..		352
TESTIMONY ON BEHALF OF PLAINTIFF:		
PITTS, M. V.....		191
WEEKS, WILLIAM E.....		121
Recalled.....		140
Cross-examination.....		143
Redirect Examination.....		173
Recross-examination		180
Recalled in Rebuttal.....		289
WINTER, GEORGE B.....		37
Cross-examination.....		71
Redirect Examination.....		113
Recross-examination.....		120
Recalled.....		186
Cross-examination.....		190
TESTIMONY ON BEHALF OF DEFENDANT:		
ALLMAIN, B. H.....		258
Cross-examination.....		262
Redirect Examination.....		263
Recross-examination.....		263
Redirect Examination.....		265
Recross-examination.....		265
ALSIP, J. F.....		266
Cross-examination		276
BURNHAM, J. L.....		252
Cross-examination.....		257
CAMPBELL, SAMUEL.....		242
Cross-examination.....		244

	Index.	Page
TESTIMONY ON BEHALF OF DEFEND-		
ANT—Continued:		
CRAWFORD, M. G.....		244
Cross-examination.....		250
Redirect Examination.....		251
CROSBY, R. M.....		194
Cross-examination.....		204
Recalled.....		285
Cross-examination		286
Redirect Examination.....		287
McCULLOUGH, J. J.....		214
Cross-examination.....		229
Redirect Examination.....		236
Recross-examination.....		237
Recalled.....		282
Cross-examination.....		284
NIXON, CHARLES L.....		124
Cross-examination.....		131
Redirect Examination.....		137
Recross-examination.....		139
Verdict.....		321
Writ of Error and Clerk's Return.....		363

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In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 7138.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY,
Defendant.

*Page-number appearing at foot of page of original certified Transcript of Record.

Complaint.

Now comes the United States of America, by Thomas P. Revelle, United States Attorney for the Western District of Washington and brings this action on behalf of the United States against the Northern Pacific Railway Company, a corporation organized and doing business under the laws of the State of Wisconsin, and having an office and place of business at Seattle, in the State of Washington; this action being brought upon suggestion of the Attorney General of the United States at the request of the Interstate Commerce Commission, and upon information furnished by said Commission.

[2]

FOR A FIRST CAUSE OF ACTION plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the Act of Congress approved April 14, 1910 (contained in 36 Statutes at Large, page 298), and an order of the Interstate Commerce Commission of March 13, 1911, prescribing standards of equipment, which order was made pursuant to the provisions and requirements of Section 3 of said Act, said defendant, on August 31, 1922, hauled or used on its line of railroad, over a part of a highway of interstate commerce, one car, to wit: its own flat No. 67219.

Plaintiff further alleges that on said date said defendant used or hauled said car as aforesaid over its line of railroad, from Auburn, in the State of

Washington, in a southerly direction, within the jurisdiction of this court, when the handhold on the right-hand side of the "B" end of said car was bent in against car, and when said car was not equipped with end handholds, one near each side of each end of car on face of endsill, with a minimum clearance of two inches, in accordance with the standards of equipment prescribed by said order of the Interstate Commerce Commission of March 13, 1911.

Plaintiff further alleges that by reason of the violation of said Act of Congress and of said order of the Interstate Commerce Commission, said defendant is liable to plaintiff in the sum of one hundred dollars. [3]

FOR A SECOND CAUSE OF ACTION plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the Act of Congress known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an Act approved April 1, 1896 (contained in 29 Statutes at Large, page 85), and as amended by an Act Approved March 2, 1903 (contained in 32 Statutes at Large, page 943), defendant, on August 31, 1922, hauled on its line of railroad one car, to wit: its own flat No. 61585, over a part of a highway of interstate commerce.

Plaintiff further alleges that on said date defendant hauled said car as aforesaid over its line of

railroad from Auburn, in the State of Washington, in a southerly direction, within the jurisdiction of this court, when the coupling and uncoupling apparatus on the "B" end of said car was out of repair and inoperative, the uncoupling lever being missing from the said end of said car, thus necessitating a man or men going between the ends of the cars to couple or uncouple them, and when said car was not equipped with couplers coupling automatically by impact, and which could be uncoupled without the necessity of a man or men going between the ends of the cars, as required by Section 2 of the Safety Appliance Act, as amended by Section 1 of the Act of March 2, 1903.

Plaintiff further alleges that by reason of the violation of the said Act of Congress, as amended, defendant is liable to plaintiff in the sum of one hundred dollars. [4]

FOR A THIRD CAUSE OF ACTION plaintiff alleges that defendant is, and was during all times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the Act of Congress known as the Safety Appliance Act, Approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an Act approved April 1, 1896 (contained in 29 Statutes at Large, page 85), and as amended by an Act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), defendant, on August 31, 1922, hauled on its line of railroad one car, to wit: its

own flat No. 68327, over a part of a highway of interstate commerce.

Plaintiff further alleges that on said date defendant hauled said car as aforesaid over its line of railroad from Auburn, in the State of Washington, in a northerly direction, within the jurisdiction of this court, when the coupling and uncoupling apparatus on the "B" end of said car was out of repair and inoperative, the uncoupling lever being missing from said end of said car, thus necessitating a man or men going between the ends of the cars to couple or uncouple them, and when said car was not equipped with couplers coupling automatically by impact, and which could be uncoupled without the necessity of a man or men going between the ends of the cars, as required by Section 2 of the Safety Appliance Act, as amended by Section 1 of the Act of March 2, 1903.

Plaintiff further alleges that by reason of the violation of the said Act of Congress, as amended, defendant is liable to plaintiff in the sum of one hundred dollars. [5]

FOR A FOURTH CAUSE OF ACTION plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the Act of Congress approved April 14, 1910 (contained in 36 Statutes at Large, page 298), said defendant, on August 31, 1922, hauled on its line of railroad one car, to wit: its own flat No. 66150, over a part of a highway of interstate commerce.

Plaintiff further alleges that on said date said defendant hauled said car as aforesaid over its line of railroad from Auburn, in the State of Washington, in a northerly direction, within the jurisdiction of this court, when the hand brake on said car was inefficient, the hand brake wheel being fouled by the lading thereon, and when said car was not equipped with an efficient hand brake, as required by Section 2 of the aforesaid Act of April 14, 1910.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of one hundred dollars. [6]

FOR A FIFTH CAUSE OF ACTION plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the Act of Congress approved April 14, 1910 (contained in 36 Statutes at Large, page 298), said defendant, on August 31, 1922, hauled on its line of railroad one car, to wit: its own flat No. 61611, over a part of a highway of interstate commerce.

Plaintiff further alleges that on said date said defendant hauled said car as aforesaid over its line of railroad from Auburn, in the State of Washington, in a northerly direction, within the jurisdiction of this court, when the hand brake on said car was out of repair and inefficient, the hand brake shaft being bent, and when said car was not equipped with an efficient hand brake, as required by Section 2 of the aforesaid Act of April 14, 1910.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of one hundred dollars. [7]

FOR A SIXTH CAUSE OF ACTION plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the Act of Congress approved April 14, 1910 (contained in 36 Statutes at Large, page 298), said defendant, on August 31, 1922, hauled on its line of railroad one car, to wit: its own flat No. 63242, over a part of a highway of interstate commerce.

Plaintiff further alleges that on said date said defendant hauled said car as aforesaid over its line of railroad from Auburn, in the State of Washington, in a northerly direction, within the jurisdiction of this court, when the hand brake on said car was out of repair and inefficient, the hand brake shaft being bent, and when said car was not equipped with an efficient hand brake, as required by Section 2 of the aforesaid Act of April 14, 1910.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of one hundred dollars. [8]

FOR A SEVENTH CAUSE OF ACTION plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier en-

gaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the Act of Congress approved April 14, 1910 (contained in 36 Statutes at Large, page 298), and an Order of the Interstate Commerce Commission of March 13, 1911, prescribing standards of equipment, which order was made pursuant to the provisions and requirements of Section 3 of said Act, said defendant, on August 31, 1922, hauled or used on its line of railroad, over a part of a highway of interstate commerce, one car, to wit: its own flat No. 68347.

Plaintiff further alleges that on said date said defendant hauled or used said car as aforesaid over its line of railroad, from Auburn, in the State of Washington, in a northerly direction, within the jurisdiction of this court, when the handhold was missing from the right-hand end of the side of car near the "A" end thereof, and when said car was not equipped with side handholds, one on face of each side-sill near each end, in accordance with the standards of equipment prescribed by said Order of the Interstate Commerce Commission of March 13, 1911.

Plaintiff further alleges that by reason of the violation of said Act of Congress and of said Order of the Interstate Commerce Commission, said defendant is liable to plaintiff in the sum of One Hundred Dollars. [9]

FOR AN EIGHTH CAUSE OF ACTION plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier en-

gaged in interstate commerce by railroad in the state of Washington.

Plaintiff further alleges that in violation of the Act of Congress approved April 14, 1910 (contained in 36 Statutes at Large, page 298), said defendant, on August 31, 1922, hauled on its line of railroad one car, to wit: its own flat No. 67105, over a part of a highway of interstate commerce.

Plaintiff further alleges that on said date said defendant hauled said car as aforesaid over its line of railroad from Auburn, in the State of Washington, in a northerly direction, within the jurisdiction of this court, when the hand brake on said car was out of repair and inefficient, the hand brake wheel being missing, and when said car was not equipped with an efficient hand brake, as required by Section 2 of the aforesaid Act of April 14, 1910.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of one hundred dollars. [10]

FOR A NINTH CAUSE OF ACTION plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the state of Washington.

Plaintiff further alleges that in violation of the Act of Congress approved April 14, 1910 (contained in 36 Statutes at Large, page 298), and an Order of the Interstate Commerce Commission of March 13, 1911, prescribing standards of equipment, which order was made pursuant to the provisions and re-

quirements of Section 3 of said Act, said defendant, on August 31, 1922, hauled or used on its line of railroad, over a part of a highway of interstate commerce, one car, to wit: its own flat No. 64764.

Plaintiff further alleges that on said date said defendant hauled or used said car as aforesaid over its line of railroad, from Auburn, in the State of Washington, in a northerly direction, within the jurisdiction of this court, when the handholds were missing from the right and left hand ends of the sides of car near the "B" end thereof, and when said car was not equipped with side handholds, one on face of each side-sill near each end, in accordance with the standards of equipment prescribed by said Order of the Interstate Commerce Commission of March 13, 1911.

Plaintiff further alleges that by reason of the violation of said Act of Congress and of said Order of the Interstate Commerce Commission, said defendant is liable to plaintiff in the sum of one hundred dollars. [11]

FOR A TENTH CAUSE OF ACTION plaintiff alleges that said defendant is and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the state of Washington.

Plaintiff further alleges that in violation of the Act of Congress approved April 14, 1910 (contained in 36 Statutes at Large, page 298), and an Order of the Interstate Commerce Commission of March 13, 1911, prescribing standards of equipment, which order was made pursuant to the provisions and re-

quirements of Section 3 of said Act, said defendant, on August 31, 1922, hauled or used on its line of railroad, over a part of a highway of interstate commerce, one car, to wit: its own *coal* No. 58618.

Plaintiff further alleges that on said date said defendant hauled or used said car as aforesaid over its line of railroad, from Auburn, in the State of Washington, in a southerly direction, within the jurisdiction of this court, when the second tread from top of the side ladder near the "B" end of said car was bent, and when said car was not equipped with ladders, one on each side, with a minimum clearance of two inches, in accordance with the standards of equipment prescribed by said Order of the Interstate Commerce Commission of March 13, 1911.

Plaintiff further alleges that by reason of the violation of said Act of Congress and of said Order of the Interstate Commerce Commission, said defendant is liable to plaintiff in the sum of one hundred dollars. [12]

FOR AN ELEVENTH CAUSE OF ACTION plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the Act of Congress approved April 14, 1910 (contained in 36 Statutes at Large, page 298), and an Order of the Interstate Commerce Commission of March 13, 1911, prescribing standards of equipment, which order was made pursuant to the provisions and re-

quirements of Section 3 of said Act, said defendant, on August 31, 1922, hauled or used on its line of railroad, over a part of a highway of interstate commerce, one car, to wit: its own flat No. 67399.

Plaintiff further alleges that on said date said defendant hauled or used said car as aforesaid over its line of railroad, from Auburn, in the State of Washington, in a northerly direction, within the jurisdiction of this court, when the handhold on the right-hand end of the side of car near the "B" end thereof was bent, and when said car was not equipped with side handholds, one on face of each side-sill near each end, with a minimum clearance of two inches, in accordance with the standards of equipment prescribed by said Order of the Interstate Commerce Commission of March 13, 1911.

Plaintiff further alleges that by reason of the violation of said Act of Congress and of said Order of the Interstate Commerce Commission, said defendant is liable to plaintiff in the sum of one hundred dollars. [13]

FOR A TWELFTH CAUSE OF ACTION plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the Act of Congress approved April 14, 1910 (contained in 36 Statutes at Large, page 298), said defendant, on August 31, 1922, hauled on its line of railroad one car, to wit: its own flat No. 65296, over a part of a highway of interstate commerce.

Plaintiff further alleges that on said date said defendant hauled said car as aforesaid over its line of railroad from Auburn, in the State of Washington, in a northerly direction, within the jurisdiction of this court, when the hand brake on said car was out of repair and inefficient, the hand brake shaft being bent, and when said car was not equipped with an efficient hand brake, as required by Section 2 of the aforesaid Act of April 14, 1910.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of one hundred dollars. [14]

FOR A THIRTEENTH CAUSE OF ACTION plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the Act of Congress approved April 14, 1910 (contained in 36 Statutes at Large, page 298), and an Order of the Interstate Commerce Commission of March 13, 1911, prescribing standards of equipment, which order was made pursuant to the provisions and requirements of Section 3 of said Act, said defendant, on September 2, 1922, hauled or used on its line of railroad, over a part of a highway of interstate commerce, one car, to wit: its own flat No. 61753.

Plaintiff further alleges that on said date said defendant hauled or used said car as aforesaid over its line of railroad, from Centralia, in the State of Washington, in a northerly direction, within the

jurisdiction of this court, when the handhold on the right-hand side of the "A" end of said car was fouled by the lading thereon, and when said car was not equipped with end handholds, one near each side of each end of car on face of end-sill, in accordance with the standards of equipment prescribed by said order of the Interstate Commerce Commission of March 13, 1911.

Plaintiff further alleges that by reason of the violation of said Act of Congress and of said Order of the Interstate Commerce Commission, said defendant is liable to plaintiff in the sum of one hundred dollars. [15]

FOR A FOURTEENTH CAUSE OF ACTION plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the Act of Congress approved April 14, 1910 (contained in 36 Statutes at Large, page 298), and an Order of the Interstate Commerce Commission of March 13, 1911, prescribing standards of equipment, which order was made pursuant to the provisions and requirements of Section 3 of said Act, said defendant, on September 2, 1922, hauled or used on its line of railroad, over a part of a highway of interstate commerce, one car, to wit: its own flat No. 64036.

Plaintiff further alleges that on said date said defendant hauled or used said car as aforesaid over its line of railroad, from Centralia, in the State of Washington, toward South Bend, in said State,

within the jurisdiction of this court, when the sill step on the left-hand end of the side of the car near the "A" end thereof was broken, and when said car was not equipped with sill steps, one near each end on each side of car, securely fastened with not less than one-half inch bolts or rivets, in accordance with the standards of equipment prescribed by said Order of the Interstate Commerce Commission of March 13, 1911.

Plaintiff further alleges that by reason of the violation of said Act of Congress and of said Order of the Interstate Commerce Commission, said defendant is liable to plaintiff in the sum of one hundred dollars. [16]

FOR A FIFTEENTH CAUSE OF ACTION plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the Act of Congress known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an Act approved April 1, 1896 (contained in 29 Statutes at Large, page 85), and as amended by an Act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), defendant, on September 2, 1922, hauled on its line of railroad one car, to wit: C. B. & Q. flat No. 90501, over a part of a highway of interstate commerce.

Plaintiff further alleges that on said date defendant hauled said car as aforesaid over its line

of railroad from Centralia, in the State of Washington, toward Tacoma, in said State, within the jurisdiction of this court, when the coupling and uncoupling apparatus on the "B" end of said car was out of repair and inoperative, the uncoupling lever being disconnected from lock block of coupler on said end of said car, thus necessitating a man or men going between the ends of the cars to couple or uncouple them, and when said car was not equipped with couplers coupling automatically by impact, and which could be uncoupled without the necessity of a man or men going between the ends of the cars, as required by Section 2 of the Safety Appliance Act, as amended by Section 1 of the Act of March 2, 1903.

Plaintiff further alleges that by reason of the violation of the said Act of Congress, as amended, defendant is liable to plaintiff in the sum of one hundred dollars. [17]

FOR A SIXTEENTH CAUSE OF ACTION plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the Act of Congress known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an Act approved April 1, 1896 (contained in 29 Statutes at Large, page 85), and as amended by an Act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), defendant, on September 2,

1922, hauled on its line of railroad one car, to wit: its own box No. 24620, over a part of a highway of interstate commerce.

Plaintiff further alleges that on said date defendant hauled said car as aforesaid over its line of railroad from Centralia, in the State of Washington, towards Tacoma, in said State, within the jurisdiction of this court, when the coupling and uncoupling apparatus on the "B" end of said car was out of repair and inoperative, the lock link of the coupler on said end of said car being broken, thus necessitating a man or men going between the ends of the cars to couple or uncouple them, and when said car was not equipped with couplers coupling automatically by impact, and which could be uncoupled without the necessity of a man or men going between the ends of the cars, as required by Section 2 of the Safety Appliance Act, as amended by Section 1 of the Act of March 2, 1903.

Plaintiff further alleges that by reason of the violation of the said Act of Congress, as amended, defendant is liable to plaintiff in the sum of one hundred dollars. [18]

FOR A SEVENTEENTH CAUSE OF ACTION plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the Act of Congress approved April 14, 1910 (contained in 36 Statutes at Large, page 298), said defendant, on September 2, 1922, hauled on its line of rail-

road one car, to wit: its own flat No. 63839, over a part of a highway of interstate commerce.

Plaintiff further alleges that on said date said defendant hauled said car as aforesaid over its line of railroad from Centralia, in the State of Washington, towards Tacoma, in said State, within the jurisdiction of this court, when the hand brake of said car was out of repair and inefficient, the hand brake chain being broken, and when said car was not equipped with an efficient hand brake, as required by Section 2 of the aforesaid Act of April 14, 1910.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of one hundred dollars. [19]

FOR AN EIGHTEENTH CAUSE OF ACTION plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the Act of Congress approved April 14, 1910 (contained in 36 Statutes at Large, page 298), said defendant, on September 7, 1922, hauled on its standard gauge line of railroad one freight car, to wit: C. G. W. box No. 13330, over a part of a highway of interstate commerce.

Plaintiff further alleges that on said date said defendant hauled said car as aforesaid over its line of railroad in and about Seattle, in the State of Washington, within the jurisdiction of this court, when the height of the drawbar on the "A" end of said

car, measured perpendicularly from the level of the tops of the rails to the center line of said drawbar, was thirty (30) inches, and when the height of said drawbar should not have been less than thirty-one and one-half ($31\frac{1}{2}$) inches, as prescribed by an order of the Interstate Commerce Commission of October 10, 1910, which order was made in pursuance of the provisions and requirements of Section 3 of the aforesaid Act of April 14, 1910.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of one hundred dollars. [20]

WHEREFORE, plaintiff prays judgment against said defendant in the sum of Eighteen Hundred dollars and its costs herein expended.

THOS. P. REVELLE,
United States Attorney.

JUDSON F. FALKNOR,
Assistant United States Attorney.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Oct. 25, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [21]

In the District Court of the United States for the
Western District of Washington, Northern
Division

No. 7138.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY,
Defendant.

Answer.

Comes now the defendant and for answer to the complaint of the plaintiff denies, admits, and alleges:

I.

Admits that it is now and at all times referred to in the plaintiff's first cause of action has been a common carrier engaged in interstate commerce by railroad within the State of Washington, and that on the 31st day of August, 1922, it hauled on its line of railroad its own flat car No. 67219, from Auburn to Tacoma, Washington, within the jurisdiction of this court, but denies each and every other allegation in plaintiff's first cause of action and the whole thereof.

II.

Admits that it is now and at all times referred to in the plaintiff's second cause of action has been a common carrier engaged in interstate commerce by railroad within the State of Washington, and that

on the 31st day of August, 1922, it hauled on its line of railroad its own flat car No. 61585, from Auburn to Tacoma, Washington, within the jurisdiction of this court, but denies each and every other allegation in said [22] second cause of action contained and the whole thereof.

III.

Admits that it is now and at all times referred to in the plaintiff's third cause of action has been engaged in interstate commerce by railroad within the State of Washington, and on the 31st day of August, 1922, it hauled on its line of railroad its own flat car No. 68327 from Auburn to Eagle Gorge, Washington, within the jurisdiction of this court, but denies each and every other allegation in plaintiff's third cause of action contained and the whole thereof.

IV.

Admits that it is now and at all times referred to in the plaintiff's fourth cause of action has been a common carrier engaged in interstate commerce by railroad within the State of Washington, and on the 31st day of August, 1922, it hauled on its line of railroad its own flat car No. 66150, from Auburn to Narco, Washington, within the jurisdiction of this court, but denies each and every other allegation in plaintiff's fourth cause of action and each and every part and the whole thereof.

V.

Admits that it is now and at all times referred to in the plaintiff's fifth cause of action has been a common carrier engaged in interstate commerce by

railroad, and on the 31st day of August, 1922, it it hauled on its line of railroad its own flat car No. 61611 from Auburn to Narco, Washington, within the jurisdiction of this court, [23] but denies each and every other allegation in plaintiff's fifth cause of action and the whole thereof.

VI.

Admits that it is now and at all times referred to in the plaintiff's sixth cause of action has been engaged in business as a common carrier in interstate commerce by railroad in the State of Washington, and on the 31st day of August, 1922, hauled on its line of railroad its own flat car No. 63242, from Auburn to Narco, Washington, within the jurisdiction of this court, but denies each and every other allegation in plaintiff's sixth cause of action and the whole thereof.

VII.

Admits that it is now and was at the time referred to in the plaintiff's seventh cause of action engaged in business as a common carrier in interstate commerce by railroad within the State of Washington, and on the 31st day of August, 1922, it hauled on its line of railroad its own flat car No. 68347, from Auburn to Narco, Washington, within the jurisdiction of this court, but denies each and every other allegation in plaintiff's seventh cause of action and the whole thereof.

VIII.

Admits that it is now and was at the time referred to in the plaintiff's eighth cause of action engaged in business as a common carrier in inter-

state commerce by railroad within the State of Washington, and on the 31st day of August, 1922, hauled on its line of railroad its own flat car No. 67105, from Auburn to Renton, Washington, [24] within the jurisdiction of this court, but denies each and every other allegation in plaintiff's eighth cause of action and the whole thereof.

IX.

Admits that it is now and was at the time referred to in plaintiff's ninth cause of action engaged in business as a common carrier in interstate commerce by railroad within the state of Washington, and on the 31st day of August, 1922, hauled on its line of railroad its own flat car No. 64764, from Auburn to Narco, Washington, within the jurisdiction of this court, but denies each and every other allegation in plaintiff's ninth cause of action and the whole thereof.

X.

Admits that it is now and was at the time referred to in the plaintiff's tenth cause of action engaged in business as a common carrier in interstate commerce by railroad within the state of Washington, and on the 31st day of August, 1922, it hauled on its line of railroad its own coal car No. 58618, from Auburn to Tacoma, Washington, within the jurisdiction of this court, but denies each and every other allegation in plaintiff's tenth cause of action and the whole thereof.

XI.

Admits that it is now and was at the time referred to in the plaintiff's eleventh cause of action

engaged in business as a common carrier in interstate commerce by railroad within the state of Washington, and on the 31st day of August, 1922, it hauled on its line of railroad its own flat car No. 67399, from Auburn to Narco, Washington, [25] within the jurisdiction of this court, but denies each and every other allegation in plaintiff's eleventh cause of action and the whole thereof.

XII.

Admits that it is now and was at the time referred to in plaintiff's twelfth cause of action engaged in business as a common carrier in interstate commerce by railroad in the state of Washington, and on the 31st day of August, 1922, it hauled on its line of railroad its own flat car No. 65296, from Auburn to Tacoma, Washington, within the jurisdiction of this court, but denies each and every other allegation in plaintiff's twelfth cause of action and the whole thereof.

XIII.

Admits that it is now and was at the time referred to in the plaintiff's thirteenth cause of action engaged in business as a common carrier in interstate commerce by railroad in the state of Washington, and on the 2d day of September, 1922, it hauled on its line of railroad its own flat car No. 61753, from Centralia, Washington, in a northerly direction, within the jurisdiction of this court, but denies each and every other allegation in plaintiff's thirteenth cause of action and the whole thereof.

XIV.

Admits that it is now and was at the time referred to in the plaintiff's fourteenth cause of action engaged in business as a common carrier in interstate commerce by railroad in the state of Washington, and on the 2d day of September, 1922, it hauled on its line of railroad its own [26] flat car No. 64036, from Centralia, Washington, in a southerly direction, within the jurisdiction of this court, but denies each and every other allegation in plaintiff's fourteenth cause of action and the whole thereof.

XV.

Admits that it is now and was at the time referred to in the plaintiff's fifteenth cause of action engaged in business as a common carrier in interstate commerce by railroad in the state of Washington, and on the 2d day of September, 1922, it hauled on its line of railroad C. B. & Q. flat car No. 90501, from Centralia in a northerly direction within the jurisdiction of this court, but denies each and every other allegation in plaintiff's fifteenth cause of action and the whole thereof.

XVI.

Admits that it is now and was at the time referred to in the plaintiff's sixteenth cause of action engaged in business as a common carrier in interstate commerce by railroad in the state of Washington, and on the 2d day of September, 1922, it hauled on its line of railroad its own box car No. 24620, from Centralia in a northerly direction, within the jurisdiction of this court, but denies

each and every other allegation in plaintiff's sixteenth cause of action and the whole thereof.

XVII.

Admits that it is now and was at the time referred to in the plaintiff's seventeenth cause of action engaged in business as a common carrier in interstate commerce by railroad in the state of Washington, and on the 2d day of September, [27] 1922, it hauled on its line of railroad its own flat car No. 63839, from Centralia to Tacoma, within the jurisdiction of this court, but denies each and every other allegation in plaintiff's seventeenth cause of action and the whole thereof.

XVIII.

Admits that it is now and was at the time referred to in the plaintiff's eighteenth cause of action a common carrier in interstate commerce by railroad in the state of Washington, and on the 7th day of September, 1922, it hauled on its railroad, in switching service in Seattle, C. G. W. box-car No. 13330, within the jurisdiction of this court, but denies each and every other allegation in plaintiff's eighteenth cause of action and the whole thereof.

XIX.

Defendant further denies that it is liable to the plaintiff in the penalty of one hundred dollars (\$100.00) on account of each of the several causes of action as set forth in its complaint, or in any other sum or on any other account, or at all, or that it is liable to the plaintiff in the sum of eighteen hundred dollars (\$1,800.00), as alleged

in the several causes of action in the plaintiff's complaint, or in any other sum. [28]

For further answer and by way of an AFFIRMATIVE DEFENSE this defendant alleges:

That it is now and at all times referred to in the several causes of action set forth in the plaintiff's complaint has been a corporation duly organized and existing under and by virtue of the laws of the state of Wisconsin, and at all of said times was operating a system of railway in interstate commerce extending from the Great Lakes to Puget Sound, with various branch lines, and was a common carrier engaged in interstate commerce by railroad within the state of Washington, and that on the 1st day of July, 1922, what are known as the joint shop craft employees, including those engaged in the work of inspecting and repairing cars and the doing of general mechanical work in connection with their upkeep, in protest of an award by the United States Labor Board, a board duly created by an Act of Congress of the United States, ceased their employment and withdrew from the service of this defendant.

That said joint shop craft employees so leaving the service of this defendant did so notwithstanding the orders and findings of the United States Labor Board, acting for and on behalf of the United States, and without any fault on the part of this defendant, and that this defendant, pursuant to the directions of said United States Labor Board, proceeded to and used its best efforts towards obtaining other employees to perform the services of those

who left its service and went on strike, and endeavored to perform its duties to the shipping public and its other [29] duties as a common carrier, as imposed upon it by the so-called interstate commerce act and the various amendments thereto, and that in so doing it was required to use many of its official staff for the purpose of keeping its railway system in operation and move the various products, perishable and otherwise, tendered to it for transportation, so as to keep the public served by its line of railroad from sustaining irreparable damage and prevent a shortage of food and other necessities, and that as a consequence of the withdrawal of said shop craft employees it was for a period of a number of weeks physically impossible to keep accurate records of the condition of the various cars in the service of this defendant; that all of said cars were properly inspected, and that pursuant to the request as made by the plaintiff, through its duly constituted representatives, this defendant handled its equipment in a reasonable manner and did not permit any equipment to be used which would endanger the safety of operation or of its employees or those having business with this defendant, and that if any of the cars referred to in the plaintiff's complaint were in the condition as referred to therein the same arose as the result of an emergency, and beyond the control of this defendant and without any default on its part, and the defects, if any, were remedied as soon as consistent in view of such emergency and after movements made necessary

thereby, at the then nearest most available point therefor; that this action be dismissed and that it recover its costs herein to be taxed, and that it have such other and further relief as may be meet and equitable and consistent with the proofs upon a hearing hereof.

GEO. T. REID and
C. H. WINDERS,
Attorneys for Defendant. [30]

United States of America,
State of Washington,
County of King,—ss.

C. H. Winders, being first duly sworn, on oath deposes and says:

That he is one of the attorneys for the defendant, Northern Pacific Railway Company; that said defendant is a foreign corporation and that he makes this verification for and on its behalf, being duly authorized so to do; that he has caused the foregoing answer to be prepared, knows the contents thereof, and believes the matters and things therein set forth are true.

C. H. WINDERS.

Subscribed and sworn to before me this 14th day of November, 1922.

BRUCE JENNINGS,
Notary Public in and for the State of Washington,
Residing at Seattle.

Received a copy of the foregoing answer this 15th day of November, 1922.

THOS. P. REVELLE,
Attorney for Pltff.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Nov. 15, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [31]

United States District Court, Western District of
Washington, Northern Division.

No. 7138.

THE UNITED STATES OF AMERICA,
Plaintiff,
vs.

NORTHERN PACIFIC RAILWAY COMPANY,
Defendant.

Demurrer.

Comes now the United States of America, by Thomas P. Revelle, United States Attorney for the Western District of Washington, and demurs to the affirmative defense of defendant herein, upon the ground that the same does not state facts sufficient to constitute a defense.

THOMAS P. REVELLE,
United States Attorney.

C. E. HUGHES,
Assistant United States Attorney.

Received copy of within demurrer this 25th day
of Nov., 1922.

C. H. WINDERS,
Attorney for Defendant.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Nov. 27, 1922. F. M. Harsberger, Clerk. By S. E. Leitch, Deputy. [32]

United States District Court, Western District of
Washington, Northern Division.

No. 7138.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY,
Defendant.

Order Overruling Demurrer.

This matter having come on duly and regularly to be heard on plaintiff's demurrer to the affirmative defense of defendant herein, and it appearing to the Court that said demurrer should be overruled,

It is, therefore, ORDERED and ADJUDGED that plaintiff's demurrer to the affirmative defense be and the same is hereby overruled.

It is further ORDERED that this order may be entered *nunc pro tunc* as of December 4, 1923.

DONE at Tacoma this 17th day of July, 1923.

EDWARD E. CUSHMAN,
United States District Judge.

O. K.—C. H. W.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern

Division. July 18, 1923. F. M. Harshberger,
Clerk. By S. E. Leitch, Deputy. [33]

United States District Court, Western District of
Washington, Northern Division.

No. 7138.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY,
Defendant.

Reply.

Comes now the plaintiff, by Thomas P. Revelle, United States Attorney for the Western District of Washington, and for a reply to the affirmative defense of defendant, admits that said defendant was at all times mentioned in plaintiff's complaint a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin and was operating a system of railways in interstate commerce extending from the Great Lakes to Puget Sound and various branch lines, and was a common carrier engaged in interstate commerce by railway within the State of Washington.

Plaintiff denies each and every other allegation contained in said affirmative defense, so called.

WHEREFORE, having fully replied to defendant's answer, plaintiff prays judgment as set out in its complaint.

THOMAS P. REVELLE,
United States Attorney.
C. E. HUGHES,

Special Assistant United States Attorney. [34]

United States of America,
Western District of Washington,
Northern Division,—ss.

C. E. Hughes, being first duly sworn, on oath deposes and says: That he is Assistant United States Attorney for the Western District of Washington;

That he has read the foregoing reply, knows the contents thereof, and believes the same to be true, to the best of his knowledge and belief.

C. E. HUGHES.

Subscribed and sworn to before me this 11th day of December, 1922.

[Seal U. S. Dist. Court]

FRANK L. CROSBY, Jr.,
Deputy Clerk, U. S. District Court, Western District of Washington.

Received a copy of the within this 12th day of Dec., 1922.

C. H. WINDERS,
Attorney for Dfdt.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. May 9, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [35]

INDEX

Pages on which
examinations
begin.

PLAINTIFF'S CASE:

George B. Winter

Direct examination..... 2

Cross examination..... 36

Redirect examination..... 78

Recross examination..... 85

(Recalled)

Direct examination..... 150

Cross examination..... 154

William E. Weeks

Direct examination..... 86

(Recalled)

Direct examination..... 105

Cross examination..... 108

Redirect examination..... 137

Recross examination..... 144

M. V. Pitts

Direct examination..... 155

DEFENDANT'S CASE:

Chas. L. Nixon

Direct examination..... 88

Cross examination..... 95

Redirect examination..... 101

Recross examination..... 104

R. M. Crosby

Direct examination..... 158

Cross examination..... 168

(Recalled)

Direct examination.....	246
Cross examination.....	246
Redirect examination.....	248

J. J. McCullough

Direct examination.....	177
Cross examination.....	192
Redirect examination.....	198
Recross examination.....	199

(Recalled)

Direct examination.....	242
Cross examination.....	245

Samuel Campbell

Direct examination.....	204
Cross examination.....	206

M. G. Crawford

Direct examination.....	206
Cross examination.....	211
Redirect examination.....	212

J. L. Burnham

Direct examination.....	213
Cross examination.....	218

(Index concluded next page)

B. H. Allmain

Direct examination.....	219
Cross examination.....	223
Redirect examination.....	224, 225
Recross examination.....	224-226

J. F. Alsip

Direct examination.....	227
Cross examination.....	237

PLAINTIFF'S REBUTTAL:

William E. Weeks	
Direct examination.....	250
Instructions to jury.....	255
Exceptions to instructions.....	272

United States District Court, Western District of
Washington, Northern Division.

No. 7138.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY, a Corporation,
Defendant.

Bill of Exceptions and Order Allowing Same.

BE IT REMEMBERED that on Tuesday, the 19th day of June, 1923, the above-entitled cause came on for trial in the above-entitled court at Seattle, Washington, before Honorable Edward E. Cushman, one of the judges of said court, sitting with a jury:

The plaintiff being represented by Mr. M. C. List, Special Assistant to the United States Attorney, and Mr. C. E. Hughes, Assistant United States Attorney, and

The defendant being represented by Mr. Chas. F. Winders, its attorney and counsel.

Whereupon the following proceedings were had:

Mr. LIST.—There was a demurrer filed to the answer set out by the defendant. The Court over-

ruled the demurrer and then there was a reply filed. I would like now to make a motion to strike from the answer the affirmative defense set up therein.

The COURT.—The motion to strike and the demurrer to the affirmative defense will be denied.

Mr. LIST.—Will you allow us an exception?

The COURT.—Exception allowed.

Whereupon a jury was duly empaneled and sworn to try the cause, opening statement on behalf of plaintiff was made by Mr. List, and the following further proceedings were had: [36]

Testimony of George B. Winter, for Plaintiff.

GEORGE B. WINTER, produced as a witness on behalf of plaintiff, having been first duly sworn, testified as follows:

Direct examination.

(By Mr. LIST.)

Q. What is your full name?

A. George B. Winter.

Q. Where do you live, Mr. Winter?

A. Portland, Oregon.

Q. What is your business?

A. Federal inspector for the Bureau of Safety, Interstate Commerce Commission.

Q. How long have you held that position?

A. Eighteen years last March.

Q. Prior to that time were you in the railroad service? A. About twelve years.

Q. State to the Court what your duties are and what they were during the summer of 1922.

(Testimony of George B. Winter.)

A. We visit the various railroad terminals, look over and inspect the railroad equipment of all kinds, including all vehicles used on a railroad, to ascertain whether or not the cars are equipped with appliances provided for by law.

Q. Do you rely on your memory of what you see in those various yards, or do you make a record of what you see and observe?

A. We make detailed records at all times.

Q. When are those records made?

A. They are made at the time the inspection is made.

Q. Are you able to testify as to the various cars involved [37—2] in this suit without refreshing your memory from those records? A. No, sir.

Q. I will call your attention to the first cause of action and ask you, Mr. Winter, if you made any inspection in Auburn, Washington, of the Northern Pacific railway yards on August 31, 1922?

A. Yes, sir, I was in Auburn, Washington, August 31, 1922.

Q. State whether or not you inspected Northern Pacific car No. 67219 at that time and place?

A. Yes, sir.

Q. What kind of a car was that?

A. A flat car.

Q. Was it a loaded car or an empty car?

A. The car was loaded with logs.

Q. Where did you first inspect that car?

A. On track No. 6 in the train yards opposite the yard office.

(Testimony of George B. Winter.)

Q. At the time you inspected that car, what was its condition with respect to handholds,—that is end handholds?

A. The end handholds on the “B” end of the car was bent in against the end sill so that it had no clearance.

Mr. WINDERS.—He said handholds. You only allege one.

The WITNESS.—Handhold.

Mr. LIST.—With respect to handholds I asked him what the condition was.

Q. (Mr. LIST continuing.) That was on what end of the car? A. On the “B” end of the car.

Q. Just state what you mean by the “B” end of the car? [38—3]

A. That is the end upon which the brakestaff is located.

Q. On what side of the end as you face the coupler?

A. It would be the right-hand side of the end of the car as you face the coupler.

Q. Was there any handhold on that side of the end on the face of the end sill at all?

Mr. WINDERS.—I object to that question. It is not alleged other than that this handhold was bent, if your Honor please.

Mr. LIST.—I will change the question.

Q. Was there any handhold on that side of the sill of the car that could be used by a brakeman in coupling or uncoupling the cars?

A. There was not.

(Testimony of George B. Winter.)

Q. What time of day did you first inspect that car? A. About 9:15 in the morning.

Q. Did you see that car any time after 9:15?

A. The car left in a train at 10:20.

Q. What train was that, Mr. Winter?

A. A train known as extra South engine 1263.

Q. What was the condition of that car when it left in that train?

A. The handhold was bent against the end sill and had no clearance.

Q. Just state to the jury whether or not that was a train that was made up there?

A. Yes, sir, it was.

Q. And at that time was Auburn a division terminal? A. Yes, sir.

Q. Do you know whether or not it was a repair point? [39—4] A. It was.

Q. How long have you been making inspections there, Mr. Winter, prior to this time?

A. Quite a number of years. Ever since the terminal was put in. I should judge about ten.

Q. The terminal is for freight or for both passenger and freight? A. For freight only.

Q. This was a freight or passenger car?

A. This was a freight-car.

Q. Did that car go out on the main line?

A. Yes, sir.

Q. In the train? A. Yes, sir.

Q. Now, referring to the second cause of action, I will ask you whether or not you inspected Northern Pacific flat car No. 61585? A. Yes, sir.

(Testimony of George B. Winter.)

Q. About what time did you inspect that car and where was it located?

A. About 9:45. On track 6.

Q. At Auburn? A. At Auburn, Washington.

Q. Now, what was the condition of that car at that time with respect to couplers and uncouplers?

A. The car had an uncoupling lever missing on the "B" end of the car.

Q. Now, what is the effect of that missing uncoupling lever so far as the operation of the coupler is concerned?

A. It renders the coupler inoperative. [40—5]

Q. How could it have been operated?

A. Possibly it might have been operated by a man going in between the cars, but that is doubtful. Probably rendered it totally inoperative.

Q. Had it been necessary to have uncoupled these cars what, in your opinion, would have been necessary, Mr. Winter?

A. For a man to go in between the ends of the cars.

Q. Go in between the cars and do what after he got in there?

A. Attempt to raise the lock link in the bottom part of an undercut sharon coupler.

Q. Raise it with his hand?

A. Raise it with his hand.

Q. Are these cars equipped with a single uncoupling lever or a double one?

A. There is some cars that have both. This had only one.

(Testimony of George B. Winter.)

Q. On the side of the train where the uncoupling lever was missing, would there be an uncoupling lever on the adjoining car? A. No, sir.

Q. What would have been necessary had that coupler been totally inoperative in order to uncouple those cars?

A. It would have been necessary for a man to go in between the ends of the cars.

Q. In order to use the coupler on the adjoining car, Mr. Winter, what would have been necessary?

Mr. WINDERS.—I object to that.

The COURT.—I will overrule the objection.

A. It would have been necessary to go in between the cars, or go around or under or over to reach the coupler on the adjoining car. [41—6]

Q. Did you see that car any time after 9:45, Mr. Winter? A. That car left in a train at 10:20.

Q. Is that the same train as the other car left in?

A. The same train. Engine 1263, Extra South.

Q. What was its condition at the time it left in that train?

A. The uncoupling lever was missing at the time it left.

Mr. LIST.—Now, with the permission of the Court, I am going to take up the tenth cause of action, for the reason that in writing up these cases the young man in the office did not write them up in the proper order. The tenth cause of action involved a car that went out in the same train.

Mr. WINDERS.—There is no objection.

(Testimony of George B. Winter.)

Q. (Mr. LIST continuing.) Now, referring to the tenth cause of action, I will ask you whether on the same date and at the same place you inspected Northern Pacific car No. 58618? A. Yes, sir.

Q. What time of day did you first inspect that car and where was it located?

A. This car was inspected about 9:15 in the morning on track No. 6.

Q. What kind of a car was that?

A. A coal car.

Q. What is known as a gondola? A. Yes, sir.

Q. A high or low side gondola?

A. A high side gondola.

Q. At the time you inspected that car what was its condition [42—7] with respect to side ladders?

A. The side ladder tread upon the "B" end of the car was bent against the side of the car, resulting in its having no clearance.

Q. When you say bent in, do you mean it was simply bent part in or was bent in flat against the body of the car?

A. Bent in flat against the body of the car.

Q. What end of the car was that?

A. That was on the "B" end, and the second ladder tread from the top.

Q. What was the distance between the top tread and the second tread below that, assuming that the other—

Mr. WINDERS.—I object to that. That is not the allegation.

(Testimony of George B. Winter.)

The COURT.—What was the question?

Mr. WINDERS.—He wants to know the distance between that and the one below.

Mr. LIST.—The order of the Commission made pursuant to Act of Congress requires that these ladder treads shall be uniformly spaced. If there was a tread missing—the second tread from the top,—I want to show the space between the first and the third.

The COURT.—I will overrule the objection.

Mr. WINDERS.—If your Honor please, I am here prepared to meet the allegation that the second tread from the top of the side ladder near the “B” end of the car was bent.

(Argument.)

The COURT.—I overrule the objection. [43—8]

Mr. WINDERS.—So that the record may be clear, it is understood that my objection goes on the ground that the only allegation in the complaint as to the tenth cause of action is that the second tread was bent on the side ladder near the “B” end of the car, and in accordance with the practice of the Government in all of the other complaints, that is followed with a reference to the particular statutory violation. That can be seen by reading each count. It is followed up a statement that it did not thereby give two-inch clearance. I think it is outside the issues.

The COURT.—Finish your answer.

The WITNESS.—Ask the question again. You interrupted in the center of the question.

(Testimony of George B. Winter.)

Mr. LIST.—I think it is not improper for me to call your Honor's attention to the order of the Commission so that your Honor will see just what I am getting at. The order requires that the minimum length of tread on side ladders—the minimum spacing between the ladder treads—shall be 19 inches. Now, this was so bent in that that minimum spacing,—I simply want to show that it was a good deal more than 19 inches—and that there was no clearance.

The COURT.—I will overrule the objection.

Mr. WINDERS.—I reserve an exception.

Q. (Mr. LIST.) Or to state it in another way, the spacing between the top ladder tread and the next [44—9] ladder tread that could be used was how much, or what was the minimum?

A. It would be from 35 to 38 inches.

Q. In the ladder tread that was bent in, was there any part of it that could be used, or was the whole length of the tread bent in?

A. The tread was bent flat against the side of the car full length.

Q. Did you see that car any time after you made that first inspection?

A. The car left in a train at 10:20.

Q. What train was that?

A. Extra South, engine 1263.

Q. That was the same one as the other two cars that you have mentioned?

A. Yes, sir.

Q. What was the condition of that car when it went out with respect to its ladder?

(Testimony of George B. Winter.)

A. The side ladder tread was bent against the side of the car, as I have previously testified to.

Q. Now, referring to the third cause of action, Mr. Winter, I will ask you to state if on that same date and at that same place you inspected Northern Pacific flat car No. 68327?

A. Yes, sir, I did.

The COURT.—Is this the third or fourth?

Mr. LIST.—This is the third. The other was the tenth, your Honor. It was written out wrong, and I took it out of order, because it was in the same train as the first and second. I took out [45—10] the first and second, and I asked permission to take out the tenth cause of action, because the car involved in the tenth cause of action went out on the same train as those in the first and second causes of action. I thought we could follow it better that way. The last one we have been talking about is the tenth cause of action.

The COURT.—What was the defect in the third cause of action?

Mr. LIST.—We are just coming to that.

Q. (Mr. LIST continuing.) Referring now to the third cause of action, did you inspect Northern Pacific car No. 68327?

A. Yes, sir.

Q. Where was that car when you first inspected it, Mr. Winter?

A. Track No. 2 in the Auburn yard.

Q. What time did you first inspect that car?

A. About 9:30 A. M.

(Testimony of George B. Winter.)

Q. What was its condition with respect to couplers and uncoupling apparatus?

A. The undercut tower uncoupling lever was missing from the "B" end of the car.

Q. What effect did that have on the operation of that coupler?

A. Rendered it inoperative.

Q. What would have been necessary in order to operate that coupler or uncoupler?

A. It would require a man to go in between the ends of the cars. [46—11]

Q. Did you see that car any time after your first inspection?

A. The car left at 10:10 A. M.

Q. In what train?

A. In a train called Extra East, engine 1616.

Q. Was that a Northern Pacific train?

A. Yes, sir.

Q. Did it go over a branch line or main line, or in a switching operation?

A. It went over the main line.

Q. What was its condition when it went out in that train?

A. The lever was still missing.

Mr. LIST.—Now, for the information of the Court and jury, the next eight cars involved movements all in the same train.

Q. (Mr. LIST continuing.) Now, Mr. Winter, referring to the fourth cause of action, state whether or not you inspected Northern Pacific car 66150 at Auburn on the same day?

A. Yes, sir; on the same day.

(Testimony of George B. Winter.)

Q. About what time did you first inspect that car?

A. Well, these cars were inspected about 9:30.

Q. You say "these cars." What do you have in mind?

A. This car.

Q. Where was it located at that time?

A. I would like to correct that last answer, if the court please. This car was inspected in connection with the other counts in the train between 8:30 and 9:30,—during that interval.

Q. What was its condition at the time you inspected it, with respect to efficient hand brakes? [47—12]

Mr. WINDERS.—I think that is calling for a conclusion of the witness, if your Honor please. I object to it on that ground.

The COURT.—Well, it does not call for a "yes" or "no" answer, so I will overrule the objection.

A. The hand—the brake—hand brake was inoperative.

Q. (Mr. LIST continuing.) In what way?

A. The logs that were loaded on the car were on the brake wheel.

Q. Were they on there so tight that the brake wheel could not be used at all?

A. On there sufficiently tight that you could not turn the wheel.

Q. Did you attempt to operate that to see if it was inoperative?

A. Yes, sir.

(Testimony of George B. Winter.)

Q. Was there any hand brake on the other end of the car that could have been used?

A. No, sir.

Q. Did you see that car any time after you first inspected it?

A. Yes, sir.

Q. What was its condition at that time?

A. The car left in a train at 9:50 in the same condition.

Q. What train was that, Mr. Winter?

A. Train No. 930; engine 1784.

Q. That is a Northern Pacific train?

A. Yes, sir.

Q. Was that a road train?

A. Yes, sir. [48—13]

Q. In which direction did that go?

A. The train moved north and east.

Q. Referring, now, to the fifth cause of action, Mr. Winter, I will ask you whether or not you made any inspection at the same place and date of Northern Pacific flat car No. 61611?

A. Yes, sir.

Q. What was its condition at the time you first inspected that car?

A. The brake shaft was bent. It was inoperative.

Q. Did you try that brake shaft?

A. Yes, sir.

Q. Was there any hand brake on the other end of the car?

A. No, sir.

Q. When did you last see that car?

(Testimony of George B. Winter.)

A. It left on the train at 9:50.

Q. What train was that?

A. The train 930; engine 1784.

Q. What was its condition when it went out in that train?

A. The brake shaft was still bent.

Q. Was that brake staff so bent that it was only partially inoperative or totally inoperative?

Mr. WINDERS.—I object to that as leading.

The COURT.—Objection sustained. It is too leading.

Q. (Mr. LIST continuing.) Just state to what extent the brake staff was bent?

A. The brake staff was bent so that it would not operate.

Q. Referring, now, to the sixth cause of action, state whether or not you inspected Northern Pacific flat car [49—14] No. 63242?

A. Yes, sir.

Q. Where was that car when you first inspected it?

A. On the outbound track in the Auburn yard.

Q. What time did you first inspect that?

A. Between the hours of 8:30 and 9:50.

Q. What was its condition at that time with respect to handholds on the "A" end of the car?

Mr. WINDERS.—Which one are you at now? The sixth?

Q. (Mr. LIST continuing.) What was its condition at that time, Mr. Winter, with respect to hand brakes?

(Testimony of George B. Winter.)

A. The brake shaft was bent, and it was inoperative.

Q. Was there any hand brake on the other end of the car?

A. No, sir.

Q. When you speak of a brake shaft on these last cars, what do you have in mind? Just explain to the jury what a brake shaft is.

A. A vertical metal rod about an inch and a quarter in diameter extending above the deck of a flat car about 30 to 35 inches, attached to the top of which is a wheel. Near the deck of the car is an appliance such as a pawl and wheel to turn the shaft and wheel and set the brakes on the car by the action of chains and lever.

Q. You mean a hand brake?

A. Yes, sir.

Q. Did you see that car any time after your first inspection?

A. That car left in this same train at 9:50.

Q. What was its condition at that time, Mr. Winter?

A. It was still inoperative. [50—15]

MR. WINDERS.—I am assuming that you saw it leave.

The WITNESS.—Yes, sir.

Q. (Mr. LIST continuing.) Referring now to the seventh cause of action, did you on the same date and at the same place inspect Northern Pacific flat car No. 68347? A. Yes, sir.

Q. When did you first inspect that car?

(Testimony of George B. Winter.)

A. During the time between 8:30 and 9:50 in the morning.

Q. What was its condition at the time you first inspected it with respect to handholds on the "A" end?

A. The handhold was missing on the "A" end of the car on the side.

Q. On the left or right hand side as you face the end, Mr. Winter?

A. That would be the left side.

Q. That is on the side of the car or on the end of the car? A. On the side of the car.

Q. That would be as you faced the side of the car— A. On the left corner.

Q. That would be near the "A" or "B" end of the car? A. This was on the "A" end of the car.

Mr. WINDERS.—I move to strike the evidence, Your Honor. The allegation is that it is on the right-hand end of the side of the car near the "A" end thereof. That is the one we are called upon to meet.

Mr. LIST.—That is what we are talking about.

Mr. WINDERS.—He said on the left.

The COURT.—Is this the seventh cause of action?

Q. (Mr. LIST continuing.) Mr. Winter, in order to correct a [51—16] misunderstanding, this was a side handhold? A. Yes, sir.

Q. State its location on the side as you face the side of the car or as you face the end of the car, whichever you prefer?

(Testimony of George B. Winter.)

A. If I faced the side of the car it would be on the right-hand corner of it. If I faced the end of the car it would be on the left-hand corner.

Q. On the side near the "A" end?

A. Yes, sir.

The COURT.—Objection overruled.

Q. Did you see that car any time after you made the first inspection? A. When it left at 9:50.

Q. What was its condition when it went out in that train?

A. In the same condition that I have just stated.

Q. Is that the same train as the others?

A. Yes, sir.

Q. Now, referring to the eighth cause of action, Mr. Winter, I will ask you to state if you made an inspection of Northern Pacific flat car No. 67105?

A. Yes, sir.

Mr. WINDERS.—I will admit that is a crippled car.

Mr. LIST.—Defective as alleged.

Mr. WINDERS—I don't know. It was so badly defective that it was taken to Renton to be repaired.

Mr. LIST.—If you can't admit that it was defective as alleged, we will have to prove it.

Q. (Mr. LIST continuing.) Referring to the eighth cause of [52—17] action, did you inspect Northern Pacific flat car No. 67105?

A. Yes, sir.

Q. When did you first inspect that car?

(Testimony of George B. Winter.)

A. During the time between 8:30 A. M. and 9:50 A. M. on the 31st of August, 1922.

Q. What was the condition of it at that time in respect to hand brakes?

A. The brake wheel was missing.

Q. Was there any way to operate the hand brake on that car? A. No, sir.

Q. Did you see that car leave in that condition?

A. Yes, sir; it left in that same train.

Q. Now, referring to the ninth cause of action, I will ask you to state whether or not you inspected Northern Pacific flat car No. 64764?

A. Yes, sir.

Q. What time of day did you first inspect that car? A. Between the hours of 8:30 and 9:50.

Q. What was its condition at that time with respect to handholds?

A. The handhold was missing on the left side and also on the right side.

Q. Near what end of the car

A. On the "B" end.

Q. Would that make one handhold missing from each side rather than two handholds missing from one side?

A. One handhold missing from each side.

Q. Near the "B" end? A. Yes, sir. [53—18]

Q. Did you see that car any time after you made your first inspection?

A. It left in this train at 9:50.

Q. What was its condition when it went out in that train? A. The same as I have just stated.

(Testimony of George B. Winter.)

Q. Referring now to the eleventh cause of action, I will ask you to state if you inspected Northern Pacific flat No. 67399? A. Yes, sir.

Q. What kind of a car was that?

A. A flat car.

Q. When did you first inspect that car, Mr. Winter?

A. During this time between 8:30 and 9:50.

Q. What was its condition with respect to handholds?

A. The handhold was bent on the "B" end on the right side as you—

Q. Was it a side or end handhold?

A. A side handhold.

Q. As you face the side of the car which side have you in mind?

A. It would be on the right-hand corner.

Q. Near what end of the car?

A. The "B" end.

Q. To what extent was the handhold bent?

A. It had no clearance.

Q. In other words, you mean it was mashed flat against the body of the car? A. Yes, sir.

Q. Did you see that car after you made your first inspection? A. Yes, sir. [54—19]

Q. What time was that?

A. When it left at 9:50.

Q. Was that in the same train,—No. 930?

A. Yes, sir.

Q. What was its condition when it went out on that train? A. The same as I have just stated.

(Testimony of George B. Winter.)

Q. Now, referring to the twelfth cause of action, I will ask you to state if you inspected Northern Pacific flat car No. 65296? A. Yes, sir.

Q. When did you first inspect that car?

A. Between the hours of 8:30 and 9:50.

Q. What was its condition at that time with respect to hand brakes?

A. It had a bent brake shaft.

Q. On what end of the car?

A. On the "B" end.

Q. What effect did that have upon the operation of the hand brake?

A. It rendered it inoperative.

Q. Was there any hand brake on the other end of the car? A. No, sir.

Q. Did you see that car leave? A. Yes, sir.

Q. In what train?

A. Train 930; engine 1784, at 9:50 A. M.

Q. What was its condition, Mr. Winter, when it left in that train?

A. The same as I have just stated.

Q. Was that in the Northern Pacific train?
[55—20]

A. Yes, sir.

Q. Was that a road movement, or what is commonly known as a transfer movement or a switching operation? A. It was a road movement.

Q. And that train, I believe, was hauled out of Auburn, Washington?

A. I did not get the question.

Q. That movement was out of Auburn?

(Testimony of George B. Winter.)

A. Yes, sir.

Q. Referring now to the thirteenth cause of action, Mr. Winter, I will ask you to state if you made any inspections at Centralia, Washington, on September 2, 1922?

A. Yes, sir; I was in Centralia, Washington, on September 2, 1922.

Q. Did you make any inspections in the Northern Pacific yard? A. Yes, sir.

Q. State whether or not at that time and place you inspected Northern Pacific flat car No. 61753?

A. I did; yes, sir.

Q. Where was that car when you first inspected it and what time was it?

A. We first inspected the car about 7:10 A. M. on track No. 3.

Q. What was its condition at that time with respect to handholds?

A. On the "A" end of the car,—the car was loaded with logs,—and a log extended out over and on top of the handhold on the end of the car.

Q. What effect did that have upon the operation of the [56—21] handhold?

Mr. WINDERS.—It would seem that this witness should state exactly what the situation was. The law says there should be two inches clearance.

The COURT.—Objection sustained.

Q. (Mr. LIST continuing.) Mr. Winter, was there any handhold on that side of the end of the car? A. There was a handhold there; yes, sir.

Q. Was it such a handhold as could be used?

(Testimony of George B. Winter.)

A. It could not be used.

Q. Why was that?

A. Because it had no clearance.

Q. Did you see that car any time after you made the first inspection? A. Yes, sir.

Q. When was the last time you saw it?

A. As it left in a train at 7:40 A. M.

Q. What train was that, Mr. Winter?

A. Train Extra North. Engines 1251 and 1611.

Q. Was that a Northern Pacific train?

A. Yes, sir.

Q. Was that a road movement or a switching or transfer movement?

A. That was a road movement.

Q. Going in what direction?

A. Towards,—going North and West; principally North.

Q. What was its condition when it left in that train? A. Same as I have just testified.

Q. Now, referring to the fourteenth cause of action, I will ask you to state if at Centralia on the same date you [57—22] inspected Northern Pacific flat car No. 64036? A. Yes, sir.

Q. Where did you first inspect that car, Mr. Winter?

A. On track No. 6, and also when it was being switched there.

Q. About what time was that?

A. About 8:30 A. M.

Q. What was its condition at that time with respect to a sill step?

(Testimony of George B. Winter.)

A. The sill step was missing from the "A" end of the car on the right corner.

Mr. WINDERS.—I move to strike that evidence. The allegation is that the sill step was broken.

The COURT.—You may explain it and see if we can harmonize this.

A. The sill step was broken off so that the step that could be used to get on to the car or step in to the car was missing.

The COURT.—Objection overruled.

Mr. WINDERS.—Exception, your Honor.

The COURT.—Exception allowed.

Q. (Mr. LIST continuing.) Was that the whole sill step, or only part of it, Mr. Winter?

Mr. WINDERS.—He said it was broken off.

Mr. LIST.—I want to find out what part.

A. That part was broken off that could be used as a sill step.

Q. You mean the bottom part? A. Yes.

Mr. WINDERS.—The tread. [58—23]

The WITNESS.—The tread.

Q. (Mr. LIST continuing.) Did you inspect that car any time after that?

A. Yes, sir, as it left in a train at 10:30 A. M.

Q. What train was that?

A. Train known as 969 South; engine 1263.

Q. Was that a Northern Pacific train?

A. Yes, sir.

Q. What was the condition of that car when it went out on that train?

A. The same as I have just stated.

(Testimony of George B. Winter.)

Mr. WINDERS.—What engine did you say was pulling that car?

The WITNESS.—1263.

Q. (Mr. LIST continuing.) I believe you stated the number of the train was 969,—is that correct?

A. Yes, sir.

Q. Referring, now, to the fifteenth cause of action, I will ask you to state if at Centralia on the same date you inspected a car known as C. B. & Q. car No. 90501? A. Yes, sir.

Q. What kind of a car was that?

A. A flat car.

Q. What time did you first inspect that car, Mr. Winter?

A. About 6:00 o'clock in the morning while switching.

Q. What was its condition at that time with respect to automatic couplers?

A. The uncoupling chain connection connecting the uncoupling lever to the coupler was broken,—disconnected.

Q. What effect did that have upon the operation of the [59—24] coupler?

A. Rendered it inoperative.

Q. What end of the car was that?

A. On the "B" end of the car.

Q. How could that have been operated, if at all?

A. By a man going in between the ends of the car.

Q. Did you see that car any time after the first inspection?

(Testimony of George B. Winter.)

A. Yes, that car left at 7:15 A. M.

Q. In what train?

A. Extra North engine 1672.

Q. Was that a Northern Pacific train?

A. Yes, sir.

Q. State whether or not it was what is commonly known as a road or transfer movement or switching operation? A. It was a road movement.

Q. What was its condition when it went out in that train, Mr. Winter?

A. Same as I have just testified to.

Mr. LIST.—For the information of the Court, the next two counts involve cars in the same train out of Centralia.

Q. Referring to the sixteenth cause of action, Mr. Winter, state whether or not you inspected Northern Pacific box-car No. 24620? A. Yes, sir.

Q. When did you first inspect that car?

A. About six o'clock in the morning.

Q. What was its condition at that time with respect to automatic couplers?

A. The lock link was broken on the "B" end of the car. [60—25]

Q. Just state what you mean by the lock link?

A. That is a part of the uncoupling chain mechanism that connects the uncoupling lever to the coupler.

Q. What effect did that have on the operation of the coupler by means of a lever?

A. Rendered it inoperative.

Q. How could it have been operated?

(Testimony of George B. Winter.)

A. Requiring the presence of a man in between the ends of the cars or go around the other side.

Q. Going around the other side to use that particular coupler?

A. No, to use the coupler on the adjoining car.

Q. Did you see that car any time after your first inspection?

A. Yes, sir; as it left in this train at 7:15 A. M.

Q. What train was that?

A. Extra North, engine 1672.

Q. What was its condition when it went out in that train?

A. Same as I have just testified to.

Q. Referring now to the seventeenth cause of action, I will ask you to state if at Centralia on the same date you inspected Northern Pacific flat car No. 63839? A. Yes, sir.

Q. What time of day did you first inspect that car?

A. That is about the same time as the other two cars; six A. M.

Q. What was its condition with respect to hand brakes? A. The brake chain was broken.

Q. What effect did that have upon the operation of the hand brake?

A. It would render it inoperative. [61—26]

Q. Was there any hand brake on the other end of the car? A. No, sir.

Q. Did you see that car any time after you first inspected it? A. Yes, sir.

Q. When was the last time you saw it?

(Testimony of George B. Winter.)

A. When it left in the train at 7:15 A. M.

Q. Was that the same train you just testified to at 7:15? A. Yes, sir.

Q. Engine 1672? A. Yes, sir.

Q. What was its condition when it went out in that train?

A. The hand brake was inoperative.

Q. Referring, now, to the eighteenth cause of action, Mr. Winter, I will ask you to state if you inspected C. G. W. car No. 13,330 at Seattle on September 7, 1922?

A. C. G. W. box-car 13,330, yes, sir.

Q. What kind of a car was that? A freight or passenger car? A. A box-car.

Q. A freight-car, you mean? A. A freight-car.

Q. Where was this car when you first inspected it?

A. On track No. 4 of the interchange yard at Hanford Street.

Q. Of the interchange yard between what railroads?

A. Between the Oregon-Washington Railroad & Navigation Company and the Northern Pacific Railroad and the Great Northern.

Q. What was the condition of that car at that time with respect to the height of its draw bar?

A. The height of the draw bar was 30 inches on the "A" end [62—27] of the car.

Q. On the "A" end. Just state to the jury how you know it was 30 inches, and how you measured it, if you did measure it?

(Testimony of George B. Winter.)

A. The measurement is made by taking the measurement between the top of the rails and the center line of the draw bar by a 5-foot or 3-foot or 4-foot rule.

Q. In order to determine the accuracy of your measurements, how do you arrive at the center of the draw bar, Mr. Winter? Did you have to guess at it, or is there anything on there?

A. There is two different ways that you may do that. The core line of the coupler has a—

Mr. WINDERS.—I submit, your Honor, that it is immaterial how they may do it. The question is how they did it in this case.

Mr. LIST.—It shows the accuracy of their measurement.

The COURT.—I think that is redirect examination in case the accuracy of the measurement is attacked.

Mr. LIST.—That is possibly true. I thought I would save a little time.

The COURT.—Objection sustained.

Q. (Mr. LIST, continuing.) Did you see that car any time after that time?

A. Not after its movement.

Q. When you saw it first on the interchange track? A. I measured it several times.

Q. That is on the interchange track? [63—28]

A. Yes, sir; I first inspected it at 8:00 A. M.

Q. Did you see it move from the interchange track? A. Yes, sir.

Q. What manner of movement was that?

(Testimony of George B. Winter.)

A. That was a transfer or interchange movement of the car between the two different railroads.

Q. What railroads were they?

A. This car was taken off the interchange track by the Northern Pacific.

Q. What engine was that? A. Engine 924.

Q. What time was that taken off by the Northern Pacific? A. At 830 A. M.

Q. What movement was made of it at that time?

A. It was hauled over into the Northern Pacific yard.

Q. Did you know its condition at the time it was hauled from the interchange track? A. Yes, sir.

Q. What was its condition?

A. The coupler measured 30 inches high.

Q. Did you see that coupler fixed before it left there?

Mr. WINDERS.—I object to that.

The COURT.—Objection overruled.

A. What is the question?

Mr. WINDERS.—He asked you if you saw that fixed.

A. No, sir, I did not see them fix it.

Q. (Mr. LIST.)—State whether or not you know of your own knowledge that it left the interchange track and was hauled by the Northern Pacific in that same condition?

Mr. PINDERS.—I object to that. [64—29]

The COURT.—Objection overruled.

A. I saw the car leave the transfer track, as I have stated.

(Testimony of George B. Winter.)

Q. (Mr. LIST.)—Was that over a standard or narrow gauge?

A. Standard gauge railroad.

Mr. LIST.—I am going to call the court's attention to another matter. I don't want to take up the time or go into it through the witness at this time. It may be proper direct examination. The witness will testify, if counsel wants it, as to the location of the particular cars in question with respect to the other cars in the train so as to show how the defective cars were made up in the train.

Mr. WINDERS.—Counsel is trying his own case.

The COURT.—Objection sustained. I will excuse the jury until 2:00 o'clock. (Addressing the jury.) Gentlemen, you will be careful during this adjournment to observe all the cautions that I have given you in any other cases and refrain from discussing this case among yourselves or permit any other person to discuss it with you or in your presence. You will hold no communication with any of the attorneys or any of the witnesses.

(Jury retired.)

The COURT.—Now, if you will state what you want, Mr. List.

Mr. LIST.—What I was going to do,—I wanted to save time without going into details, because [65—30] the jury cannot remember all the numbers of these cars. But in every inspection that was made by this witness and the other witness there is shown not only the condition of these cars, but there is shown in his report what car was

attached to the "A" end of the defective car, and what car was coupled to the "B" end of the defective car. That can all be verified by the wheel reports of the Northern Pacific.

If there is going to be any question about these cars being hauled out in these trains, then I will bring that in detail. I will also verify it by our own records. I don't understand there is any question.

The COURT.—You may be allowed to do something of that kind in rebuttal. I don't think it is a part of your case in chief.

Mr. LIST.—I had my doubts about that.

The COURT.—I don't think you have to anticipate all the eventualities. When the defense is developed, it may save a lot of time to meet it then.

Mr. LIST.—I understand, then, that it will be admissible in rebuttal if the accuracy of these reports is questioned.

Mr. WINDERS.—I am going to question the accuracy of the inspector's reports. I am not agreeing for a single minute that there is a single defective car except certain cars that went out to Renton to be repaired. I am going to deny [66—31] and I am going to produce my evidence here showing that except those cars that we took out for the purpose of having them repaired at Renton or at other points, they were in good shape when they left the yard.

Mr. LIST.—I will make my offer to prove at two o'clock.

(Testimony of George B. Winter.)

The COURT.—You might make it now.

Mr. LIST.—The Government offers to prove by the witness Winter that when each of the defective cars to which he testified left in these trains, he also made a record of the car to which each end of the defective car was coupled. That with respect to the first cause of action the witness would testify that coupled to the “A” end of the car that was claimed to be defective was Northern Pacific flat car No. 67,476, and coupled to the “B” end of the car which is claimed to be defective was Northern Pacific flat car No. 62,296. That as to the second cause of action the witness Winter will testify that with respect to the defective car there was coupled to its “A” end Northern Pacific box-car No. 31,691, and coupled to its “B” end was Northern Pacific flat car No. 65,336.

Mr. WINDERS.—I am not going to object, but I don’t know what it has got to do with the case. I am not going to admit the accuracy of the reports, but if he wants to fill up the record by showing it, I will not object. [67—32]

The COURT.—Very well. You will be allowed to introduce your further evidence. The court is at recess until 2 oclock.

(Recess till two oclock P. M.)

Afternoon Session, Two O’clock.

Continuation of proceedings. All parties present.

Q. (Mr. LIST, resuming direct examination.) You testified that Auburn was at this time a divi-

(Testimony of George B. Winter.)

sion terminal and the three trains leaving there with these cars were made up there? A. Yes, sir.

Q. What was Centralia at that time? Simply a passing station or a division terminal?

A. A divisional terminal.

Q. For freight trains? A. Yes, sir.

Q. These cars that you testified as to being hauled out of Centralia—were they picked up by passing trains or were the trains made up there?

A. The trains were made up there.

Q. Was anybody with you when you made these several inspections? A. William E. Weeks.

Q. Mr. Weeks of the Interstate Commerce Commission? [68—33] A. Yes, sir.

Q. Did you make independent inspections and independent records, or did you make joint records?

A. We made independent records.

Q. Mr. Winter, will you refer to your notes—I want to run over the number of each car, just showing the initials and numbers of the cars that these cars that you testified to as being defective were coupled to, taking the first count—

Mr. WINDERS.—I am perfectly willing that he take and read them down the list without question.

Q. (Mr. LIST.) Will you just read that?

A. You wish me to read the tenth count as you put it in evidence?

Q. Yes. Read the first, second, and tenth, and then on down the rest in order.

A. The first count was Northern Pacific car No. 67219. Coupled to the "A" end of that car was

(Testimony of George B. Winter.)

Northern Pacific flat car No. 67476. To the "B" end was 62296. The second count was Northern Pacific flat car No. 61585. Coupled to the "A" end was Northern Pacific box-car 31691. To the "B" end Northern Pacific flat car 65336. The tenth cause was Northern Pacific coal car 58618. Coupled to the "A" end was Northern Pacific coal car 57861. On the "B" end was Northern Pacific flat car 66240. The third count was Northern Pacific flat car 68327. Coupled to the "A" end was 61804, and to the "B" end was 66363. The fourth count was Northern Pacific flat 66150. Coupled to the "A" end was 63830 [69—34] and to the "B" end 66468. The fifth count was N. P. 61611. Coupled to the "A" end was 63830 and to the "B" end 66975. The sixth cause was N. P. 63242. Coupled to the "A" end was 68347 and to the "B" end was 61745. The seventh cause was N. P. flat 68347. Coupled to the "A" end was 63242 and the "B" end 64569. The eighth cause was N. P. flat 67105. Coupled to the "A" end was 61392 and to the "B" end 63060. The ninth cause was N. P. 64764. Coupled to the "A" end was 68014 and on the "B" end 66468. The eleventh cause of action was N. P. 67399. Coupled to the "A" end was 61901 and to the "B" end was 63917. The twelfth cause was 65296. Coupled to the "A" end was 62467, and to the "B" end 65994. The thirteenth cause of action was Northern Pacific flat 61753. Coupled to the "A" end was Northern Pacific 67000, and on the "B" end 65197. The fourteenth cause of action

(Testimony of George B. Winter.)

was Northern Pacific flat 64036. On the "A" end was Northern Pacific flat 68896 and on the "B" end Northern Pacific box 137601. The fifteenth cause was C. B. & Q. 90501. On the "A" end was B. & O. box 18994, and on the "B" end was Northern Pacific box 79470. The sixteenth cause was N. P. box 24620. On the "A" end was C. & N. W. 56100 and on the "B" end was N. P. 33690. The seventeenth cause was N. P. flat 63839. On the "A" end was N. P. 65642. On the "B" end was 62213. The eighteenth cause of action was C. G. W. 13330. On the "A" end was G. N. box 210358, and on the "B" end was Great Northern box 120238. [70—35]

Cross-examination.

(By Mr. WINDERS.)

Q. Mr. Winter, how long have you been inspecting cars for the Commission or for the Government?

A. A little over eighteen years.

Q. How much of that time have you been over on the coast? A. About fifteen years.

Q. During how much of that time have you and Mr. Weeks worked together?

A. About twelve years.

Q. You always work together, don't you?

A. No, sir.

Q. You never come into court unless you both testify to the same cars, do you? Have you ever come into court on a prosecution unless you both were here with the same record? A. No, sir.

Q. Now, what day of the week was August 31?

(Testimony of George B. Winter.)

A. I could refer to a calendar. I can't tell you offhand now.

Q. How long had you been at Auburn prior to the 31st? Did you go there that day or the day before?

A. I think we went there early that morning.

Q. Where did you go from?

A. I cannot recall now without referring to some travel records.

Q. Did you go from here or Portland or Tacoma?

A. I would not like to say.

Q. Anyhow, you did not get into Auburn until the morning of the 31st? [71—36]

A. To the best of my recollection we arrived there that morning.

Q. How many cars were there in the Auburn yard on the morning of August 31?

A. Several hundred.

Q. Several hundred. Would you make it several thousand? A. No, sir.

Q. How long were you around there on the 31st?

A. Most of the day.

Q. How many cars were handled in that yard on the 31st,—went through that yard?

A. I don't know.

Q. Give the jury the benefit of your expert opinion.

A. I would say while I was there in the neighborhood of two hundred.

Q. In the neighborhood of two hundred? Well how long were you there?

(Testimony of George B. Winter.)

A. We were there until afternoon.

Q. You were there until afternoon?

A. I don't just recall now.

Q. What time did these trains in which these cars that you testified about leave the Auburn yard?

A. What time did these trains leave?

Q. Yes.

A. In relation to the violations or the total number handled?

Q. What time of day did these trains leave the Auburn yard?

A. During the time I was there.

Q. Well, I know. What time?

A. Between the hours, I think, of about six A. M. and I [72—37] would say twelve or one o'clock.

Q. Were you in the city of Auburn as early as six o'clock in the morning on the 31st of August?

A. No, it was six o'clock at Centralia and about eight o'clock at Auburn.

Q. Was there any other trains went out of the yard at the time you were there other than these three trains that you testified about?

A. To the best of my recollection there were, yes.

Q. There were? A. Yes.

Q. How many, do you know? A. I do not.

Q. As a matter of fact, there was not a single one of these cars that you testified to that went out on the main line, was there?

A. Every one of them went out on the main line.

(Testimony of George B. Winter.)

Q. I mean over the main line,—hailed over the Cascade Mountains?

A. I speak of the main line as the eastbound main line.

Q. I beg your pardon. I should have said that there wasn't any of these cars that you testified about that went out east over the Cascade mountains?

A. I have not a record that they went out over the mountains.

Q. They were practically all log flats or log cars or coal cars? Were there any cars that you testified to at Auburn that were not a log flat or a coal car?

A. I think they covered principally log flats and coal cars.

Q. Have you any independent recollection, Mr. Winter, about [73—38] those cars other than what you have written down in that memorandum book? A. A slight recollection, yes.

Q. You have a recollection of being there on that morning?

A. Due to some other circumstances, yes.

Q. Now, you have testified that you got up on these five or six or seven log flats on which you say the brake staff was bent and you tried that brake staff? A. Yes.

Q. Was anybody with you up on the car? Did Weeks go up there with you on the car?

A. It is not necessary to get up on the flat car

(Testimony of George B. Winter.)

sometimes to tell whether hand brakes will operate or not.

Q. Did you get up on these flat cars and try these hand brakes on which you claim the brake staff was bent? A. I think we did.

Q. Did you or did you not? What is your testimony? A. I would say "yes."

Q. When? A. At the time—

Q. Get out your book and tell us about the hour?

A. At the time they were inspected.

Q. Well, tell us about the hour?

A. Well, I would have to go into each individual case.

Q. I think I have a memorandum that would help you. We will take the fifth one. You say the hand brake shaft was bent. Did you get up on that car? If you did, what time of day? That is 61611.

A. That particular car was inspected between the hours of 8:30 A. M. and 9:50 A. M. to ascertain— [74—39]

Q. Between 8:30 and what time? A. 9:50.

Q. Well, that is an hour and twenty minutes?

A. Yes, sir.

Q. Can you give any more definite data? Don't you mark down the time on your books? When did you mark down on that 8:30 and 9:50?

A. At the time these records were made that morning opposite the train in the yard.

Q. After you had got through with all your inspections?

(Testimony of George B. Winter.)

A. During the time of the inspections.

Q. Well, have you got any data there as to whether or not it was 8:30 or whether it was 9:30 or 9:50 when you examined this fifth cause of action? There is a leeway of an hour and twenty minutes. Do you know whether you examined that at 8:30 or 9:00 or 9:30? A. I wouldn't say, no.

Q. Then, you did not write down the time of your inspection in your book at the time that you made the inspection, did you?

A. Not with that individual car.

Q. Not on that individual car. Did you get on that car and try the brake?

A. I tried the brake. I would not say whether I got on the car or not.

Q. Did Mr. Weeks try it with you?

A. He did.

Q. You both tried it. Could you try that brake from the ground?

A. You could, yes. [75—40]

Q. Was there a load of logs on it?

A. The car was loaded with logs; yes, sir.

Q. Did you try it more than once? Did you try that brake more than once?

A. I would not say that we did.

Q. What is that?

A. I would not say that we did.

Q. Well, the jury would like to know whether you did or did not. Did you try the brakes on that car, the fifth cause of action,—more than once?

(Testimony of George B. Winter.)

A. We tried the brake when we inspected the car and noticed the condition of the car. And when it left in the train at 9:50 it was in the same condition.

Q. Of course you understand that in order to get a conviction you have to testify that. Now, you mean to tell this jury in answer to my question that you tried the brake on this car more than once?

A. I would not say that I did.

Q. Did you or did you not?

A. I would not say.

Q. Did you on that day try the brakes on any of these cars more than once?

A. I don't know. I would not say.

Q. Then you say that you can't tell whether or not you examined this car at 8:30 or 9:00 or 9:30? Was the engine hooked onto this train when you examined and tested this brake?

A. I don't believe it was.

Q. You won't say that you got up on the car, will you, Winter? [76—41] A. No, sir.

Q. At that time there were some of these trainmen,—I don't say all or the majority of them, but a few of the trainmen working for the Northern Pacific and the other railroad companies that were not out on strike that were quite active in trying to help the strikers out?

Mr. LIST.—If the Court please, that is objected to as incompetent, irrelevant and immaterial.

The COURT.—Objection overruled.

Mr. WINDERS.—It is a preliminary question.

(Testimony of George B. Winter.)

Mr. LIST.—Exception.

Q. (Mr. WINDERS continuing.) There was a stray man or two that was not any too loyal to the railroad? A. I would say generally—

Q. I didn't say generally. I have a great deal of pride in the employees of the Northern Pacific; but I say there were a few stray ones that were not very loyal,—that were trying to help make things as miserable as they could in the operation of these yards,—isn't that true?

Mr. LIST.—If the Court please, we object to that as incompetent, irrelevant and immaterial.

The COURT.—I think I will sustain the objection to that.

Q. (Mr. WINDERS.) Is it not a fact, Mr. Winter, that there were continually tales being carried to you and to Mr. Weeks from men who were drawing salaries from the Northern Pacific and from other corporations, complaining about the equipment? A. Yes, sir. [77—42]

Q. Did any of these men tell you,—referring to this fifth cause of action,—that this particular brake staff was bent? A. No, sir.

Q. Did any of these men call your attention to this particular brake staff? A. No, sir.

Q. When you found this brake staff,—now referring to the fifth cause of action,—inoperative, you saw a good many officials of the Northern Pacific around inspecting the cars, didn't you?

A. I won't say that I saw a good many officials.

Q. Now, Mr. Burnham, Assistant Western Traf-

(Testimony of George B. Winter.)

fic Manager,—did you see Mr. Burnham or Mr. Crawford,—did you see those men out there that morning along these trains?

A. I believe I remember the two gentlemen, yes, sir.

Q. Did you say anything to them about this brake staff not working? A. No, sir.

Q. Did you say anything to them or any other men working along those cars inspecting them as to any of these other defects you have testified to in the other eighteen cars,—as to the rest of the eighteen cars? A. No, sir, not at that time.

Q. Did you ever say anything to Mr. Burnham or any of the other gentlemen there,—Mr. Burnham or Mr. Crawford or Mr. Allmain,—this gentleman here,— or Mr. Alsip back here, at Centralia, about the cars you are complaining about in this case?

Mr. LIST.—I object to that as incompetent, irrelevant [78—43] and immaterial.

The COURT.—Objection overruled.

Mr. LIST.—Exception.

A. No, sir.

Q. (Mr. WINDERS.) If you had climbed on any of the cars along there that morning and tried to test any of these brakes to see if they were fouled so that they would not work, you would be in plain view of the men working along the trains?

A. We were in plain view.

Q. I beg your pardon?

A. We were in plain view.

(Testimony of George B. Winter.)

Q. If you got up on any of the cars they could see you, couldn't they?

A. Any more so than they could where we were.

Q. Well, your answer as to this fifth cause of action as to getting up on the car and trying this brake,—would your answer as to these other cars on which you say the brake would not work be equally indefinite? Did you or did you not get up on any of the cars on which you claim the brake staff was bent so that it would not work?

A. I would not say.

Q. Did Mr. Weeks in your presence get up on any of them? A. I cannot tell.

Q. Did you see him when he was with you work any of these brake staffs? A. Yes, sir.

Q. You did? So, as a matter of fact, you were together, were you? [79—44] A. Yes, sir.

Q. Can you give this jury from your records the hour when you tested a single one of these numerous bent brake staffs that you are talking about on the 31st of August at Auburn or the second day of September in Centralia?

A. As I stated before, I think it was between the hour of 8:30 and 9:50.

Q. Yes. I know. A. At Auburn.

Q. I am asking you if you wrote down on a single one of your inspections the exact hour that you made the examination, or if you waited until you got all through and then wrote all this down?

A. The Centralia case on September 2d was inspected about 6:00 A. M.

(Testimony of George B. Winter.)

Q. When you inspected that car at 6:00 A. M., was the road engine attached to the train?

A. I would not say at this time. I don't think it was, though.

Q. Go right along. What have you got in your book about 6:00 A. M. I have "First inspected at 6:00 A. M. while switching."

Q. What cause of action is that?

A. That is the fifteenth cause of action; fifteenth, sixteenth and seventeenth.

Q. Now, all of those cars in the fifteenth, sixteenth and seventeenth causes of action,—they were all inspected while the cars were being switched, were they?

A. They were inspected while the train was being made up. [80—45] What I mean by being switched is when they were being put into this train.

Q. In the fifteenth, sixteenth and seventeenth causes of action, the cars in the Centralia yard were being inspected while they were being switched in to the train?

A. Yes, sir, that is when the first inspection was made.

Q. So the road engine would not be attached?

A. You don't let me answer the question.

Q. I want you to protect yourself.

A. The answer to the question I wished to answer was that I first inspected these cars at 6:15 and again when they left at 7:15.

(Testimony of George B. Winter.)

Q. How close were you to the cars when they left at 7.15?

A. I was probably alongside of them.

Q. Where were you?

A. I was alongside of the train.

Q. When the train moved out? A. Yes, sir.

Q. You saw all of these various defects, did you? A. Yes, sir.

Q. All on your side of the train, were they?

A. Well, just a minute.

Q. You can answer that question. Have you ever testified in a single case that you did not stand and see the train move and that you saw all the defects?

A. I never have, no, sir. We saw the car leave.

Q. You can't tell whether there was two inches clearance or whether there was a four-inch clearance when you saw the train leave, could you?

A. I could. [81—46]

Q. Where were you standing when this train left the Centralia yards?

A. I was standing alongside of the train on the east and west passing track.

Q. On the east and west passing track? And all the defects were on your side, were they? Was Weeks on the other side?

A. All of the defects were not on the side of the train.

Q. Were you and Weeks on the same side of the train?

A. I think we were, yes.

(Testimony of George B. Winter.)

Q. Were you at Auburn? A. Not at all times.

Q. Well, when the trains pulled out?

A. It is according to how the defect came on the train.

Q. You don't know then? You don't know whether you were or not? A. Yes, I do know.

Q. The only examination, however, that you made of these cars at Centralia and the only examination that you made at Auburn was when they were being switched in and later you stood and saw the trains go by,—is that correct?

A. No, sir; that is not correct.

Q. When the train pulled out, was the train moving when you noticed the defects the second time? A. Yes, sir.

Q. Very well. Then, did you make more than one examination when they were making up the train,—switching the cars in,—did you make another examination after that before the train moved out?

A. We kept track of the cars while there in the train to see [82—47] whether they were going to be repaired or not.

Q. Answer my question, Mr. Winter, I asked you if you made any other examination of these cars after they were switched into the train other than to stand along somewhere along the track or road and see them move out in the train?

Mr. LIST.—If your Honor please, I submit that the witness started to answer that question.

The COURT.—This is cross-examination.

(Testimony of George B. Winter.)

Q. (Mr. WINDERS.) You can answer that "yes" or "no." A. Yes.

Q. Now, tell me,—taking your fifth cause of action,—where was that car that you examined somewhere between 8.30 and 9:50 when you examined it the second time? A. I don't know.

Q. Would you swear to this jury that you did examine it a second time before it moved out of that yard? A. Yes, sir.

Q. Have you got any record of it?

A. I was up and down this train many times before it left.

Q. What time did that train leave?

A. 9:50 in the morning.

Q. There were two other trains that left before ten o'clock that morning concerning which you testified you also examined the cars, from Auburn?

A. I don't recollect that I did.

Q. Well, you look at your records and see if you did not?

A. What is the question, please?

Q. I say, you have already testified that on this morning before ten o'clock there were either two or three other [83—48] trains that you were watching going out?

A. I did not file any suits on any other trains before this 9:50 train that morning at Auburn.

Q. What time did the train carrying car No. 67219 go out? A. What cause of action is that?

Q. The first cause of action. I will change that from ten to 10:20.

(Testimony of George B. Winter.)

A. That changes the question. What is the question?

Q. I will make it 10:20. What time did the train that you testified carried cars 67105 and 68327 go out?

A. I did not testify to car No. 68327.

Q. Didn't you testify as to the third cause of action? A. Yes,—that is right. 68327.

Q. What time did that train go out? A. 10:10.

Q. What time did the train carrying car No. 67219 go out? A. What cause is that?

Q. That is the first.

A. That train left at 10:20.

Q. You have testified that one train went at 9:50 with some of those cars, one at 10:10, and one at 10:20. A. Yes, sir.

Q. How long is the Auburn yard of the Northern Pacific?

A. The full yard is about two miles.

Q. Tell us what part of the yard the train carrying the car in your first cause of action departed from?

A. About opposite the yard office in the northern part of the yard.

Q. Which way did it go? Towards Tacoma?

A. Towards Tacoma. [84—49]

Q. All right. In which direction did the train that carried the cars,—those eight or nine that you have here in a bunch,—in what direction did that go? A. That train moved northward.

Q. That went towards Seattle, didn't it?

(Testimony of George B. Winter.)

A. A short distance, yes.

Q. That train was headed towards Seattle?

A. Yes, sir.

Q. When it went out of the yards it went out of the north end of the yard, didn't it?

A. Yes, sir.

Q. The other train went out along towards the south end of the yard? A. Yes, sir.

Q. What part of the yard did the train in the third cause of action go out of?

A. Track No. 2 near the scales. These trains all left from the same neighborhood,—right in the north end of the yard.

Q. Which direction did that train go?

A. It went east.

Q. How long did it take this train with all these log flats that came towards Seattle to move past you? Did you actually see it go out of the yard?

A. Yes, sir.

Q. How long did it take for that train to go by?

A. Probably ten minutes.

Q. That would bring you up,—if it started out at 9:50,—bring you up to ten o'clock, wouldn't it?

A. Yes, sir. [85—50]

Q. Then where did you go?

A. Well, we probably,—let us see,—we went over to track No. 2 near the scales about 100 feet,—less than 500 feet over there to another track.

Q. You went over to see another train go out, did you? A. Yes, sir.

Q. How long did it take that train to go out?

(Testimony of George B. Winter.)

A. I would not say. Probably a space of five minutes in pulling it by you.

Q. So if it started at 9:10 it would be 9:15. The other train went at 10:20? A. Yes, sir.

Q. Did you go over there and watch it go out?

A. Yes, sir.

Q. At least during the time you watched these trains go out you did not have these cars under your surveillance did you? A. No, sir.

Q. How many cars were there in those trains?

A. Probably 150 altogether.

Mr. LIST.—You mean in each train?

The WITNESS.—In all three trains.

Q. (Mr. WINDERS continuing.) Probably 50 in each train?

A. In about that neighborhood.

Q. Getting back now to these brake staffs, which I want to finish up with first, as near as you have given thus far, you have testified that you and Weeks tried those once. Will you say that you tried them a second time?

A. No, I would not say.

Q. Now, you would not say that after these cars were switched,—[86—51] being switched into the train,—that you saw those cars to pay particular attention to them until the train moved them out of the yard, would you?

A. Not particular attention, no.

Q. No.

A. We saw them, however, many times.

Q. Now, this brake staff,—so the jury can un-

(Testimony of George B. Winter.)

derstand this matter,—they probably know,—that is metal, isn't it? Cast-iron shaft?

A. Well, no; it is supposed to be steel, as a rule.

Q. All right. That is the shaft on the end of the car that the brakeman takes and winds up?

A. Winds up.

Q. When do you use those handles? When are they used in modern operation?

A. What is that question?

Q. I say when is a hand brake used in the modern operation of a railroad?

A. At the present day it is probably used principally in switching or spotting of cars.

Q. As a matter of fact, this same law that you are sworn to enforce requires that all trains be hooked up with air so they can be controlled by the air brakes, doesn't it? A. Yes, sir.

Q. Now, you have testified that on four or five of these cars this brake lever was either loose or something wrong with it,—the lever that you pull up— A. Uncoupling lever.

Q. In other words, there is a lever extending out over the [87—52] end of the cars,—the jury have probably seen,—that you can grab hold of with your hands and uncouple the cars?

A. Yes, sir.

Q. Did you inspect and find that situation first while those cars were being switched into the train?

A. I think the particular counts were probably in the train. I would have to—

(Testimony of George B. Winter.)

Q. Could you look at your book and see? The first one was the second cause of action. That is car No. 61585 from Auburn.

A. That uncoupling lever was missing.

Q. What time did you find that uncoupling lever missing? What time of day?

A. About 9:45 A. M.

Q. Let us see your record on the 9:45?

A. Here is the inspection record right here (indicating).

Q. So you did examine that car at 9:45?

A. Here is the time the train leaves (indicating). Here is the engine number.

Q. You have got the time on a lot of these, haven't you? Here is one at 9:15.

A. Let us see.

Q. This hour on the book that you have on here, —that is the hour that you actually made the discovery of the defect, is it?

A. In that particular case.

The COURT.—Speak louder so the jury can hear you.

The WITNESS.—In that particular case. [88—53]

Q. (Mr. WINDERS.) I say the hour that is shown on here is the hour that you found the particular defect in that particular car?

A. Yes, sir.

Q. So that on that car you found it at 9:45?

A. Yes, sir.

(Testimony of George B. Winter.)

Q. Would you say that the road engine was hitched onto the train at that time?

A. I would not attempt to testify as to that definitely, no. I think it was.

Q. Anyhow, at the time you found that it was at 9:45? A. Yes, sir.

Q. What was the next car you inspected after that one that you are suing for? Have you got any that you inspected after 9:45?

A. I think some of these seven or eight counts in that train 930 were inspected after that time, because the notes show that the inspection continued up until the time that the cars left; and that was at 9:50.

Q. So that after, for instance, you had seen this lever out of order you would make your note of that right then, would you, in your book,—stop and write it?

A. If I am permitted to answer, we make a first inspection and then at the time the train leaves.

Q. You have told the jury two or three times that you watched the train go out of the yard. I am asking you if when at 9:45 you found this lever lost or gone, did you right then before you moved to another car write that in your book?

A. Yes, sir. [89—54]

Q. Let us take that particular cause of action. Just give the jury an idea. They will want to know how busy you were out there. Is that the one here (indicating)? A. Yes, sir.

(Testimony of George B. Winter.)

Q. Just look at the one,—you have got a drawing here on the back and one thing another of that kind,—here is inspection 945. You think that after that before the train went out you inspected five or six more cars?

A. I would say “yes” to that question.

Q. You would have five minutes to do that,—the train leaving at 9:50? A. Yes, sir.

Q. So that you did not have very much time to go back and test these things two or three times, did you, before that train went out?

A. Not after 9:45 I would not, no.

Q. Have you got any record of having seen that car and inspected it before 9:45?

A. No, sir. I am speaking of the other car. I was speaking of the other cars when I replied that we had time to inspect them before the train left at 9:50, because they had been in the train since 8:30.

Q. Well, you say you don’t know whether you inspected them at 8:30 or 9:30. You say you think that after 9:45 you inspected six or eight of them? Now, we will take this lever that comes out here, and if that is in good working order all the brakeman has to do is to raise that up and uncouple the car? A. Yes, sir.

Q. Counsel here went into great detail with you as to the [90—55] effect if that lever was out of order that there would be only one way for a man to get that uncoupled and that would be to go in between the car and work it open with his hands—did you so testify? A. Yes, sir.

(Testimony of George B. Winter.)

Q. Isn't it a fact that on the other side of the car connected with this there is another uncoupling lever that works the same coupling?

Mr. LIST.—That is objected to, if the Court please, for the reason that the law requires that the coupler on each car shall be operated by its own mechanism. I will be glad to quote a number of authorities on that point.

The COURT.—I sustain the objection.

Q. (Mr. WINDERS.) Did you testify that it would be necessary in order to uncouple a car in which this lever was lost or broken for a man to go between the cars? A. I did.

Q. Is it not a fact that you can go on the other side of the car? Is there not an uncoupling lever on the other side of the car to which this particular car was attached that will uncouple the car without going between the cars?

Mr. LIST.—That is objected to, if the Court please.

The COURT.—I don't see that it is material, but if it is testing the memory of the witness or his observation or his credibility, I will overrule the objection.

A. You mean on the same car or the adjoining car? [91—56]

Q. (Mr. WINDERS.) My question was if on the car to which this car was coupled there was not a lever which could be worked which would uncouple the cars,—which would make it unnecessary for a man to go between the cars?

(Testimony of George B. Winter.)

A. It would be necessary for him to go over on the other side of the train to get a lever on the adjoining car.

Q. Naturally if it was on the other side he would have to get over there? A. Yes, sir.

Q. I am asking if there was not a lever on the other side of the cars that could be operated to make this uncoupling without a man going between the cars?

A. In this particular case I don't know.

Q. You don't know?

A. Because I did not make a record of any adjoining car as to any defects.

Q. You did not make any record. Did you go up both sides of this train? A. Yes, sir.

Q. You read here to counsel the number of cars on either side of these cars? A. Yes, sir.

Q. You have access to all of the company's records, have you not,—the Interstate Commerce Commission? A. Yes, sir.

Q. Yes, any time you want to you can go in to the company's yard and get the manifest of a train which will show you the location of any and every train and all the cars? A. Yes, sir.

Q. So you still say to this jury that you don't know whether [92—57] or not this car could have been uncoupled by going on the other side of the train?

A. I did not file information for suit on any—

Q. You answer my question, Mr. Winter, please. I say you still tell this jury that you don't know

(Testimony of George B. Winter.)

whether or not they could go on the other side and use the lever on the other side and uncouple these cars?

Mr. LIST.—If the Court please, in order to save time, if counsel wants to raise any legal question on which he wants a ruling, I will make the admission that he could get on the other side of the train and use a coupling on the other car and make the uncoupling, if there is any dispute on that.

Mr. WINDERS.—There is going to be a very serious dispute on the evidence in this case. It seems to me that without interruption I have a right to examine this witness.

The COURT.—Objection overruled.

A. I don't know.

Q. (Mr. WINDERS continuing.) Please refer to your eighth cause of action that alleges that the hand brake wheel was missing. Did you make a careful inspection of that car?

A. Sufficient to know that the wheel was missing.

Q. Did you get up on the car?

A. I would not say that I did.

Q. As a matter of fact, wasn't that car defective in a great many other particulars?

A. I don't know. [93—58]

Q. The only thing that you saw wrong with it was that this steel shaft was off.

A. That is the part of the car that I inspected, was the safety appliance.

Q. You don't know anything else wrong with it at all? A. No, sir.

(Testimony of George B. Winter.)

Q. What time of day did you inspect that car,—that is on that same train?

A. That is between 8:30 and 9:50.

Q. You don't know whether that was after 9:45 or before? A. I would not state, no.

Q. Will you turn to your thirteenth cause of action,—I think we have gone over the brake staff cases now and these couplers,—now, we have got one in which you say the handholds of the right-hand side of the car,—right-hand side of the "A" end of the car was fouled by the lading thereon.

A. Yes, sir.

Q. What kind of a car was that?

A. Northern Pacific flat-car.

The COURT.—What handhold was that?

A. The handhold on the right-hand side of the end as you face the end of the car.

Q. (Mr. WINDERS continuing.) As you face which end of the car?

A. The "A" end of the car.

Q. I believe you said the "A" end was the one that did not have the brake and the "B" end was the one that had the brake?

A. Usually in the majority of cases that is true.
[94—59]

Q. You so testified, didn't you? A. Yes, sir.

Q. As a matter of fact, the "B" end of the car is the end through which the air cylinder runs?

A. That is also where—

Q. Isn't that always the "B" end of the car?

A. Yes, sir.

(Testimony of George B. Winter.)

Q. And the "B" end of the car may be the end that the brake staff is on and the brake staff might be on the "A" end? A. Not in this case; no, sir.

Q. I am not talking about this case. I say you testified here that the "B" end of the car was the end the brake staff is on, and now you have just testified that the "B" end is the end through which the air cylinder runs. Isn't it a fact that on many cars the brake staff is on the "A" end instead of the "B" end? A. It is not.

Q. So you still say that the brake staff is always on the "B" end?

A. To this extent that there are a few eastern railroads that have double brake staffs,—the Pennsylvania and the B. & O.

Q. Where a car only has one brake staff, it is on the end through which the air cylinder runs? That is your understanding?

A. That is my belief.

Q. Now, tell the jury,—we will assume that this is the top of a flat-car right here (indicating). Where is this handhold? How far below the floor of the car if [95—60] you face the end of the car?

A. It would be in the center of the car. There is a handhold on one side.

Q. It says the handhold on the right-hand side of the "A" end of said car?

A. That is this right here (indicating).

Q. How far now below the face of the deck of the car?

(Testimony of George B. Winter.)

A. In this particular case it was up near the top of the deck of the car.

Q. You say it was fouled. So you are now complaining, are you, that the grab-iron was too close to the deck of the car?

A. The log on this car was out—

Q. How close to the top or the level of this car was the grab-iron?

A. Sufficient enough so that it did not have any clearance.

Q. Then it is your testimony, as I understand it, that this grabiron extending out here something like that (indicating) was level with the top of the car,—is that right? A. Practically so.

Q. What kind of bunks did this log car have on it? A. I don't know.

Q. Did you make any record?

A. I did not check it up.

Q. Did it have bunks on it? A. I don't know.

Q. As a matter of fact, you know that on top of the face of that car the minimum or smallest log bunk upon which those logs ride are at least six inches above the bottom [96—61] or floor?

A. I would not say of this car.

Q. Did you ever see logs in commercial traffic on the Northern Pacific system handled on these flat cars where the bunk did not lift the logs at least six inches above the floor of the car?

A. Thousands of them.

Q. Where? A. In my own inspection.

(Testimony of George B. Winter.)

Q. Do you say there is any operated on the Northern Pacific to-day,—cars without any log bunks?

A. I did not so state.

Q. Do you know they were any cars operated on the Northern Pacific system during the months of August and September, 1922, that did not have log bunks on them? A. I don't know.

Q. But it is your testimony to this jury that there was a log extending over and the end of that log did not clear two inches of this handhold,—went down within two inches of this handhold?

A. That is my contention.

Q. Did you measure it? A. I did not have to.

Q. Was Weeks with you? A. Yes, sir.

Q. How long did you stop at that car?

A. Long enough to make notes relative to its condition.

Q. You did not keep your eye on that car when it went out of the yard, did you?

A. Yes, sir. [97—62]

Q. Saw that particular car? A. Yes, sir.

Q. Did you write anything down in your book as it went by you? A. I don't remember.

Q. I wish for the benefit of the jury, and particularly for the Northern Pacific men, you would explain to the jury how you could test these brakes that you say could not be operated, without getting up on top of the car?

A. The one with the brake wheel missing I knew could not be turned. The other cars with the bent brake staffs,—the brake staffs were turned over by

(Testimony of George B. Winter.)

the logs on them to the extent that you could not turn them or wind the chain on the shaft which sets the brake.

Q. You are testifying now absolutely free and clear without referring to any record, are you not?

A. To the extent that we state that to our best knowledge it shows an inoperative brake. Otherwise I would not—

Q. Why did you tell counsel on direct examination that you tried to operate these brakes and they would not operate? A. Because I did so.

Q. Would you tell this jury and tell me and these other men here who think they know a little something about railroading, how you could operate or attempt to operate that brake without getting up on the car?

A. If I may be permitted to explain—

Q. Yes, get right down and explain it.

Mr. LIST.—May I suggest to the Court if there is going to be any serious contention on that [98—63] point, that the jury be allowed to go down in the railroad yards and inspect a car?

Mr. WINDERS.—As I said several times, there is a serious contest of everything in this case.

The COURT.—If railroad counsel can advise the Court at five o'clock where a suitable car can be inspected by the jury, the bailiff can take them down and let them see what you are talking about. It should be explained to them. Possibly it better be deferred until the close of all the testimony.

Mr. WINDERS.—I will try to get a log flat if I can and the jury can go and examine it.

(Testimony of George B. Winter.)

The COURT.—At the close of all the testimony and before the argument, if it is then in shape so they can see a car, I will let them go.

Mr. LIST.—Not only as to this character of defects, but any other in which the same question may come up, or a similar question.

The COURT.—If it can be arranged.

Q. (Mr. WINDERS continuing.) Now, on your fourteenth cause of action,—car No. 64036 at Centralia,—we will get down to this broken sill step,—I think you first testified that there was no sill step on the car, didn't you? A. In effect there was not.

Q. What does your memorandum say?

A. Sill step was missing and broken off.

Q. When did you write "broken off"?

A. During the time of the inspection.

Q. What time did you inspect that car? [99—64] A. About 8:30 in the morning.

Q. What time did the car leave Centralia?

A. 10:30.

Q. You have got down there 8:30, have you, in your book? A. Yes, sir.

Q. That would be the sill step on the end of the car, so as the train went along there would be a car here, would be a car here, and here would be another car (indicating). This step would be in between here (indicating)—is that correct?

A. The step is not in between the cars. It is on the side.

Q. On the side? A. Yes.

(Testimony of George B. Winter.)

Q. Do you know on which side of this car from the compass direction this step was off?

A. I would not attempt to say.

Q. Are you willing to swear on your oath to this jury that when that car went out of there, as you stood and watched that train go by, it was on your side?

A. Yes, sir.

Q. You would swear to that?

A. Yes, sir.

Q. Can you tell which side it was?

A. You asked me about the compass direction.

Q. North, south, east or west?

A. Track No. 6 in Centralia yard runs generally north and south.

Q. We will consider it runs north and south. Now, were you on the east or the west side? [100—65]

A. I would be on the west side.

Q. That is, you were over towards the roundhouse, were you?

A. This was not near the roundhouse.

Q. Was not near the roundhouse?

A. No, sir, track No. 6 in the Centralia yard is not near the roundhouse.

Q. How far was that from the depot?

A. Quarter of a mile, probably.

Q. Did this train then go on out past the depot?

A. Yes, sir.

Q. What did you do when that train went by? Go to look at some more cars?

A. I paid particular attention to this particular

(Testimony of George B. Winter.)

car as to whether or not the car was in the same condition as when we first found it.

Q. After this train had gone by and you paid this particular attention, what did you do then after the train had gone by? Go to inspect other cars?

A. I don't think we filed any violations that day.

Q. I asked you if you went to inspect any other cars? A. Oh, yes.

Q. You stayed down in the yard and inspected cars, did you? A. That is what I was there for.

Q. Doesn't the yard of the Northern Pacific practically extended up to the depot,—how far did you say it was from where you were to the depot?

A. About a quarter of a mile.

Q. Doesn't the yard extend up to the depot? [101—66] A. Yes, beyond the depot.

Q. You did not see that car for some quarter of a mile before it got out of the yard, did you?

A. We saw this train pull out on the main line and proceed southward.

Q. You did not see that car get out of the yard, though, did you?

A. The yard, in the sense of leaving the train yard, yes.

Q. Did you see that train go beyond the limits of the yard? A. The repair yard, yes.

Q. Well, was there any particular repair yard, at that time?

A. The repair yard did not extend to the depot.

(Testimony of George B. Winter.)

Q. Was there any repair yard at that time in Centralia, or any particular repair tracks in Auburn at that time? A. Yes, sir.

Q. Weren't they making repairs up even as far as the depot where those trains went out in Centralia? A. No, sir.

Q. How often were you in Centralia—

A. How?

Q. How often were you in Centralia during this strike period?

A. I make a periodical trip to Centralia every sixty or ninety days.

Q. Just for the benefit of the jury, what is the extent of your territory

A. Western Montana, Washington, Oregon and Idaho.

Q. Did you stay in Centralia more than this one day?

A. I cannot say as to that without referring to the travel [102—67] records.

Q. You don't know very much about where they were repairing cars during this strike period, either in Auburn or Centralia, do you?

A. I think I do.

Mr. LIST.—I am going to ask you to bring your travel records up, so as to satisfy counsel on that point.

The WITNESS.—Yes, sir.

Q. You know things were not normal at Auburn at that time? A. I do.

(Testimony of George B. Winter.)

Q. You know things were not normal at Centralia at that time? A. I do.

Q. You know that ordinarily when operations are normal all cars are supposed to be repaired before they are switched into the outgoing train, are they not, in ordinary railroad operations?

A. That is the intention and endeavor.

Q. That is the intention?

A. It is not always done.

Q. No, it is not always done. We are not all infallible. But the general idea is to-day and it was before this emergency that cars having anything wrong with them in the way of bent handholds or brake levers missing,—it is not uncommon to find when a car comes in that a brake lever is out of order in the yards? A. No, sir.

Q. Hundreds of them. These steps and one thing and another, they ship them to Centralia and around by the hundred, [103—68] don't they?

A. Yes, sir.

Q. In ordinary operation with a full crew of car repairers, when traffic is normal, the common practice is to straighten these handholds and put on these drawbars and these connecting levers before the car is switched into the train?

A. Yes, sir.

Q. Were you over in Idaho during this strike period? A. Yes, sir.

Q. Were you in Montana during the strike period? A. Yes, sir.

Q. Were you in Oregon during the strike period?

(Testimony of George B. Winter.)

A. Yes, sir.

Q. Were you in Eastern Washington?

A. Yes, sir.

Q. Your work is not confined alone to our company, but you take in other roads?

A. All the lines engaged in interstate commerce.

Q. Now, I think that leaves this C. G. W. car. That is this car that you found down on Hanford Street on September 10th. It is C. G. W. 13330. It is a car delivered on Hanford Street transfer by the Great Northern for the Fisher Flouring Mills. That car was loaded, wasn't it, Winter?

A. Loaded with wheat.

Q. Do you know where it was consigned?

A. No, sir.

Q. Consigned to Seattle?

A. I don't know. [104—69]

Q. What time of day did you see that car?

A. We first inspected it at 8:00 o'clock in the morning.

Q. Where was it at that time?

A. It was on track No. 4 in the Hanford Street interchange yard.

Q. You mean the track on which the railroads put cars to go from one line to the other?

A. Yes, sir.

Q. Do you know over what road this car had been hauled? A. Great Northern.

Q. Over the Great Northern. They were putting it on the interchange for the Northern Pacific to deliver it to some place? A. Yes, sir.

(Testimony of George B. Winter.)

Q. You saw this car at 8:00 o'clock?

A. 8:00 o'clock in the morning.

Q. Who was with you? A. Mr. Weeks.

Q. Your friend Weeks here. What did you have,—a tape?

A. No, sir; we carry a stiff folding rule.

Q. You had it with you that morning?

A. We always carry it with us when we go down.

Q. At what time did you measure that car?

A. 8:00 o'clock.

Q. Did you measure it more than once?

A. We made several measurements.

Q. When did you measure it the second time?

A. My notes show—

Q. When did you measure it the second time, is the question?

A. I cannot answer the question. I don't know.

[105—70]

Q. How many times did you measure it?

A. Several times.

Q. Does your record show how many times?

A. It shows several times.

Q. It was on the interchange track the first time? A. Yes, sir.

Q. The second time? A. Interchange track.

Q. The last time?

A. On the interchange track.

Q. Standing at the same place?

A. I would not say as to that.

Q. Would you say it was standing at the same

(Testimony of George B. Winter.)

place when you measured it the last of these several times as it was the first?

A. I don't know. My notes don't show that. I inspected those cars. I can't remember.

Q. I am going into this matter, because conditions were not normal at this time, were they?

A. No, sir.

Q. And the work was not being carried on the way that it ordinarily was carried on? Now, how long did you stay around where that car was? What time did you leave the location?

A. I think we left with the transfer when it went over to the Northern Pacific yards.

Q. When it went over to the Northern Pacific yards. What time was that? A. 8:30 A. M.

Q. 8:30 you saw it taken from this transfer into the [106—71] Northern Pacific yard?

A. Yes, sir.

Q. And that is the last you saw of it?

A. Yes, sir.

Q. Were there a good many cars on this transfer? A. Not very many.

Q. Do you know about how many? Well, anyhow you would state there was a car on either side of it, wasn't there? There was a car on either side of it? A. Yes, sir.

Q. Were those cars all going to the Northern Pacific?

A. The Northern Pacific hauled those other three cars with this into the Northern Pacific yards.

Q. If it was necessary for the Northern Pacific

(Testimony of George B. Winter.)

to get either one of those cars,—the car that was behind this,—they would have to move this car into the yard, wouldn't they?

A. Not necessarily. They could switch it out on the transfer.

Q. Is there any place to repair that car on the transfer? A. Yes, sir.

Q. What do you mean by the transfer?

A. By the ordinary term, it is meant as a connection between two lines where they interchange their equipment. Cars are held on certain tracks and then picked up by connecting lines. That is called an interchange or transfer movement.

Q. In other words, all this is railroad tracks, isn't it, near there? A. Yes, sir. [107—72]

Q. In other words, you have a track going along here (indicating), if this is the Great Northern track, if you get that over to us they put a switch in there and build out there some rails over here, and then on the other end this track will probably connect with the Northern Pacific track (indicating). This car was set by the Great Northern that brought this in on their own track,—they set it on these other rails with some other cars, and what you saw the Northern Pacific do was to hook on to those cars and take them off of that transfer and take them into the Northern Pacific yards,—that is what you saw them do?

A. This particular yard is segregated from the Northern Pacific train yards here (indicating). The interchange yard is set aside for that purpose

(Testimony of George B. Winter.)

between the several different lines. Cars are put on certain tracks for certain railroads, and they are hauled from the connection, which was the movement in this case.

Q. The movement in this case consisted of the Great Northern bringing this and some other cars in on a railroad track to which the Northern Pacific had access, and the Northern Pacific hooking on to those cars that they set in there for the purpose of taking them into the Northern Pacific yard,—is that the movement? A. Yes, sir.

Q. What facilities were there along this transfer track for the purpose of raising up this draw bar that was an inch too low, or an inch and a half?

A. I don't know what facilities you have there.

Q. You know there wasn't anything there but some naked ties [108—73] with rails on the top of them and some switches at either end,—isn't that all there was on those tracks?

A. They have car inspectors placed there and some materials at times.

Q. Cars were repaired on the transfer track?

A. Yes, sir.

Q. You have seen them repaired there, have you? A. Yes, sir.

Q. During this strike period?

A. I would not so state.

Q. That track is right along Whatcom Avenue, isn't it?

A. Yes, sir, that is a street that runs north and

(Testimony of George B. Winter.)

south along the bay front. I think that is Whatcom Avenue.

Q. Were you around very much during the strike period? A. Quite a good deal.

Q. Were you around when things were at their height in Auburn?

A. I guess I was. I guess it was the height of it on the day in question.

Q. Do you think it would be advisable from the standpoint of either the railroad company or the public to have a crew of men out along a public street repairing cars at that time?

A. This interchange track is not on a public street.

Q. I say along a public street.

A. Just let us have that question again.

Q. Do you think it advisable from the standpoint either of the railroad company or the general public in the city of Seattle to have had a crew of car repairers, who [109—74] of course would be taking the place of the strikers working on cars as close to Whatcom Avenue as was this transfer track?

Mr. LIST.—That is objected to, if the Court please.

The COURT.—Objection sustained.

Q. (Mr. WINDERS continuing.) I want to go back to this grabiron. My attention has been called to this grabiron with the log coming closer than two inches from it on the end of this car. To what is this grabiron attached on the end of the car? A. The endsill.

(Testimony of George B. Winter.)

Q. Is there anything above the endsill?

A. The decking of the car as a rule.

Q. How thick is the decking of the car?

A. Usually two inches, or two and a half.

Q. The regulation is that there must be two inches clear,—is not that the Federal regulation?

A. Yes, sir, the minimum clearance of two inches.

Q. I wish you would look at your seventeenth cause of action. I want to be sure for the purpose of the record; would you give the car numbers that were on either end of that car number 63839?

A. N. P. flat car 65642 and 62213.

Q. That is your testimony as to the arrangement of the cars as the cars actually went out of the station? A. Yes, sir.

Q. And you actually saw and took those numbers yourself? A. Yes, sir.

Q. Turn to your cause of action 14 and give me the number of the engine that you claim pulled those cars out? [110—75] A. 1263.

Q. You are sure of that? A. Yes, sir.

Q. You are sure that is the engine that actually started the train in which these cars were out on the road? A. Yes, sir.

Q. Now, your cause of action No. 12,—I suppose you were up by the engine when it started, were you, Mr. Winter?

A. Sufficient enough to get and identify the train.

Q. Were you standing up by the engine when the engine started on these trains?

(Testimony of George B. Winter.)

A. I would not say that I was.

Q. Where would you stand? In the middle of the train or up along the engine or where?

A. I would stand where the first car in the train back of the engine was located with defects.

Q. Would that be the last car you would inspect? Would that be the way you were working?

A. I don't understand your question.

Q. Would that be the car you would last inspect in the particular train?

A. Why, we would inspect all the cars that we had noted defective within the train.

Q. At Auburn where you have got one accurate record of time,—you have got down 9:45,—you say after 9:45, between that and 9:50, you probably examined six or eight cars in that five minutes? Were those cars up toward the engine? Was the last car in your inspection before the car went out up towards the engine or the other way? [111—76]

A. I would not state now.

Q. You don't know whether you were standing in the middle of the train when these trains started or up along the engine or near the rear?

A. I was about where the cars were defective,—wherever those were located.

Q. What car have you in that twelfth cause of action? A. 65296.

Q. Now, what train do you claim that car left Auburn in? A. Train 930, engine 1784.

Q. Train what? A. Train No. 930.

(Testimony of George B. Winter.)

Q. The train left what time? What engine and what train?

A. Train No. 930, engine 1784; 9:50 A. M. on 8-31.

Q. You are testifying that this car in the twelfth cause of action,—65296,—went in a northerly direction from Auburn, did it? A. Yes, sir.

Q. And it went in the same train that these other cars that you have enumerated here,—several other cars that you have testified about? A. Yes, sir.

Q. What was the car numbers on either side of that?

A. The twelfth cause of action,—on the “A” end was 62467. On the “B” end 65994.

Q. If, as a matter of fact, that car instead of going north went to Tacoma on that day,—did actually go to Tacoma, why it must have been taken out of that train that day?

A. Not necessarily. It might have been up and been unloaded [112—77] and come back.

Q. In other words, the train might have come on through Seattle and been unloaded and gone back to Auburn and then sent on over to Tacoma that same day? A. Well, this particular car.

Q. That would be pretty good service, wouldn't it?

A. Yes, it would.

Q. I think that is all.

A. That is, if it came to Seattle.

Redirect Examination.

(By Mr. LIST.)

Q. When you testified as to the number of these

(Testimony of George B. Winter.)

different trains, where did you get that information?

A. From personal observation around the yard.

Q. But as to the number of train,—that is you speak of the train as being No. 930, engine 1784,—just state to the jury where you got that information as to the number of the train.

A. Either from the conductor or engineer at the time they left.

Q. Would the engine itself have any number?

A. Not indicative of the number of the train. There would be an indication as to whether it was regular or extra.

Q. In making your record from which you have refreshed your memory, did you make that record as you were going along from time to time, or did you wait and make the record at one time?

Mr. WINDERS.—I object to that as not proper redirect examination. [113—78]

The COURT.—Objection overruled.

A. I make it from time to time.

The COURT.—You did not answer that last question. You answer that you make it from time to time. The question was did you make that record as you would go along from time to time or did you wait and make the record at one time.

A. I made it from time to time—various times.

Q. (Mr. LIST continuing.) Referring to the flat cars which you testified as having defective hand brakes, was it necessary to get on those cars in order to find out whether the handbrake was inoperative?

(Testimony of George B. Winter.)

Mr. WINDERS.—I think he has already gone into that. It is cross-examination of his own witness.

The COURT.—Objection sustained.

Mr. LIST.—Exception, please. I have not gone into that, Mr. Winders.

The COURT.—Mr. Winders asked if it was necessary, and he stepped down to the table and gave some illustration. I think he took two pens and went down and showed how the brake staff was operated.

Mr. WINDERS.—That is what he started, but he did not finish.

The COURT.—I will overrule the objection. I thought he explained it.

Q. (Question read.) A. It was not.

Q. (Mr. LIST continuing.) Mr. Winter, did you make records of all cars that you inspected this morning, or did you [114—79] simply make a record of what cars you found with what is known as penalty defects?

Mr. WINDERS.—I object to that question as incompetent, irrelevant and immaterial.

The COURT.—Objection overruled.

A. At the same time we make a record of all cars that carry safety appliance defects. It is only those that carry defects that we file information and send to the Commission.

Q. (Mr. LIST.) On this particular occasion,—the cars that you testified to, were those the only records that you made at that time?

(Testimony of George B. Winter.)

A. No, at Auburn on the 31st of August, I think I have—

Mr. WINDERS.—I don't know what the purpose is, but it is clearly incompetent.

The COURT.—Objection sustained.

Mr. LIST.—I will come to that in another way, your Honor.

Q. Mr. Winter, you were asked if you notified any of the officials around there,—some of them being named,—as to having found these cars defective, and your answer was that you did not.

A. I did not.

Q. Now, will you state to the Court and jury why you did not do that?

Mr. WINDERS.—I object to that on the ground that it is immaterial why he did not.

The COURT.—Objection overruled.

A. Well, a good many times, as in this case, we find that it does not do any good. [115—80]

Mr. WINDERS.—I move to strike that answer and that the jury be instructed to disregard it.

The COURT.—I will deny the motion.

Q. (Mr. LIST, continuing.) State whether or not you actually made any inspection of any other cars on this particular occasion and notified any officials there of the defective equipment?

Mr. WINDERS.—I don't think that is material. I object to it on the ground that it is not material.

Mr. LIST.—We are trying to show that we have been more than fair with you.

The COURT.—Objection sustained.

(Testimony of George B. Winter.)

Mr. LIST.—I offer to prove by this witness that on August 31 he reported to one of the officials of the Northern Pacific of having inspected about two hundred cars and having found approximately fifty of them in a defective condition; that he gave to the Northern Pacific official the record showing the individual numbers of those cars found defective.

Mr. WINDERS.—Now, of course, counsel knows that is not competent. I object to it. We deny the allegation.

Mr. LIST.—You opened the door.

Mr. WINDERS.—I did not open the door.

The COURT.—I permitted Mr. Winders' original question as to reporting to the officials of the railroad company, and Mr. Winders on cross-examination had a right to show, if he could, [116—81] any conduct on the part of the witness from which he might argue that it was inconsistent with his testimony. You would have a right on redirect to explain why he did not make the report on those particular cars, in order to explain away the conduct that Mr. Winders was probably preparing himself to argue as inconsistent with his testimony; but you could not go into other cars.

Mr. LIST.—He has answered that question, which your Honor permitted, that he found out it did not do any good.

The COURT.—I sustain the objection to your offer. The jury are instructed to disregard any statement or allusion to any other cars found defective and reported.

(Testimony of George B. Winter.)

Q. (Mr. LIST continuing.) It has been suggested here that there was a strike on and at that time your conduct in reporting these cases for prosecution was not in a spirit of fairness. The strike went into effect in July, I believe. How long was it after that before you reported any cases against the Northern Pacific for prosecution?

Mr. WINDERS.—I object to that, on the ground that it is absolutely immaterial.

Mr. LIST.—I understand that counsel raised the question of fairness.

The COURT.—I sustain the objection.

Q. (Mr. LIST continuing.) Mr. Winter, Mr. Winders asked you if it was not true that to your knowledge some of the men were not loyal to the Northern Pacific and pointed [117—82] out defects to you upon which you based your prosecution. I am going to ask you to state whether or not it is true that the employees of the Northern Pacific did not accuse you of being too fair to the Northern Pacific?

Mr. WINDERS.—I object to that as having nothing to with the issue. My question was leading up to the question as to whether or not those men actually saw those defects, or whether they were told about them by some disgruntled employees.

The COURT.—We have only got a limited time to finish this case. I sustain the objection.

Mr. LIST.—Exception.

The COURT.—Exception allowed.

Q. (Mr. LIST.) Mr. Winter, when these trains

(Testimony of George B. Winter.)

started you stood there observing the cars that were defective. State whether or not you only stood there for the purpose of observing the movement of the defective cars, or whether you stood there until the whole train went out?

Mr. WINDERS.—I object to that as leading and suggestive.

The COURT.—Objection overruled.

A. We stood there and observed whether or not the particular cars that were defective were leaving in the train.

Q. Now, Mr. Winter, you testified a few minutes ago at the request of Mr. Winders about the clearance of the handhold on the end of the car,—the minimum being two [118—83] inches. I don't know whether the jury understood you to mean that the two inches must be out from the end of the car or that it must be two inches below the top of the deck of the car.

A. I mean that the clearance of the handhold should have two inches all around the full length of the handhold around the bar that is used as a handhold.

Q. You mean extending out from the end of the car?

A. Extending out from the end of the car as well as on top.

Q. Would that mean that the two inches would be both out from the end sill and two inches below the top of the car? A. Not necessarily, no.

Q. That is just what I want to get at,—what you

(Testimony of George B. Winter.)

meant when you said it had to have two inches clearance?

A. The handhold has to have two inches clearance.

Q. From what?

A. From the end of the car, or any part of the end of the car.

Q. Just out from the end of the car? A. Yes.

Q. But the handhold itself could be at a level with the deck of the car?

A. Yes, it might be applied even with the top of the decking.

Mr. LIST.—I have an offer to prove that I want to make later on when the jury is not here. May I reserve that, your Honor?

The COURT.—Yes, sir; at five o'clock you may make your offer. [119—84]

Recross-examination.

(By Mr. WINDERS.)

Q. This handhold that counsel has asked about,—my understanding of the law is that there must be two inches all around that handhold in the clear,—is that true? A. Yes, sir.

Q. So it must not only be two inches out here (indicating), but it must be two inches out here (indicating), and must be two inches from the obstruction on top?

A. If there is an obstruction there, yes.

Q. That is what you testified to in this case. Isn't that what you are suing us for, that it did not have two inches clearance on top?

A. It did not have that clearance on top.

(Testimony of George B. Winter.)

Q. That is what you are suing for?

A. Yes, sir.

Q. In other words, my understanding is that it is your contention that there was a log extending over the end of this car so that it came within two inches of the grabiron?

A. Came on the grabiron. The grabiron may be applied up on the decking.

Q. Was it applied up on the decking?

A. I would not say. It was applied up high enough so that it was blocked by this log that came down over.

(Witness excused.) [120—85]

Testimony of William E. Weeks, for Plaintiff.

WILLIAM E. WEEKS, produced as a witness on behalf of plaintiff, have been first duly sworn, testified as follows:

Direct Examination.

(By Mr. LIST.)

Q. Mr. Weeks, where do you live? A. Tacoma.

Q. What is your business?

A. Inspector for the Bureau of Safety, Interstate Commerce Commission.

Q. Were you with Mr. Winter at Auburn on August 31, 1922 and later at Centralia on September 2, 1922, and at Seattle on September 7, 1922?

A. Auburn and Centralia, yes, sir.

Q. How long have you been with the Commission?

A. About thirteen years.

(Testimony of William E. Weeks.)

Q. Prior to that time were you in the railroad service? A. Yes, sir.

Q. What capacity? A. I was engineer.

Q. For how long?

A. About ten years before coming out here.

Q. Did you inspect all these cars that Mr. Winter testified to? A. Yes, sir.

Q. Did you make a personal record of what you saw personally? A. Yes, sir.

Q. Did you see these cars leave in the trains that Mr. Winter testified to? A. Yes, sir. [121—86]

Q. Referring now to the first cause of action, Northern Pacific 67219,—just state briefly what you found its condition to be.

Mr. WINDERS.—I understand, Mr. Weeks, that you cannot testify except by referring to your record.

The WITNESS.—What is that?

Mr. WINDERS.—You have not any independent recollection outside of your records?

The WITNESS.—I have not. N. P. flat car 67219—

Q. (Mr. LIST.) Just state what its condition was when you first saw it and when it went out in Extra South 1263.

A. It had a handhold bent on the “B” end, bent in against the sill opposite the lever, with no clearance.

Q. What did you find the condition of Northern flat car 61585 to be?

A. Had an undercut tower lever missing on the

(Testimony of William E. Weeks.)

“B” end; also had handholds missing on the “B” end.

Mr. LIST.—I think the complaint only mentions the automatic coupler.

Mr. WINDERS.—Yes, I had not heard about the handholds.

The COURT.—That part about the handholds will be stricken.

Q. (Mr. LIST.) Referring to the tenth cause of action, car No. 58618,—what was its condition when you first saw it and when it was leaving in the train?

A. It had a side ladder tread bent and no clearance.

Q. What was the location of that ladder? [122—87]

A. On the “B” end.

Q. Referring now to the third cause of action, what was the condition of Northern Pacific flat car No. 68327 when you first inspected it and when you saw it leave in Extra East engine 1616?

A. The undercut lever was missing on the “B” end.

Mr. WINDERS.—If the Court please, one of my witnesses,—Mr. Nixon,—has just got a telegram saying that his wife is ill and of course he desires to leave as soon as possible. May we have permission to put him on out of order?

Mr. LIST.—Certainly; we have no objection to that.

(Mr. Weeks is excused from the stand temporarily.)

Testimony of Charles L. Nixon, for Defendant.

CHARLES L. NIXON, produced as a witness on behalf of defendants, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. WINDERS.)

Q. Where do you reside? A. Portland.

Q. You have just received a message saying that your wife has been taken to the hospital.

A. Yes, sir.

Q. In whose employ are you, Mr. Nixon? [123—88]

A. Union Pacific and O.-W. R. & N.

Q. In what capacity? A. Conductor.

Q. You were acting as trainmaster at the time of the strike, were you, Mr. Nixon? A. Yes, sir.

Q. On account of the conditions at Centralia, were you loaned to the Northern Pacific to help out at that point? A. I was sent up there to assist.

Q. How much railroad experience have you had, Mr. Nixon? A. About thirty-two years.

Q. You operated trains during that time,—handled trains and equipment?

A. Yes, all the time.

Q. What was the condition that existed at Centralia as far as inspection and repair of cars is concerned on the 2d of September?

A. There was not anyone up there but Mr. Alsip and Mr. Campbell and myself. I got there the night of the second.

(Testimony of Charles L. Nixon.)

Q. You went to work on the night of the second?

A. Yes. I worked up at the depot the night of the second particularly helping get passenger trains through there.

Q. If you did not get there until the night of the second,—these cars went out the morning of the second,—you were not there the morning of the second?

A. I think I went up there,—I think I got there at 1:25 on the second; 1:25 P. M. [124—89]

Q. These trains went out before that?

A. July. I went up there on the second day of July.

The COURT.—I thought you said September.

Q. (Mr. WINDERS continuing.) You have checked over these cars in the several causes of action that are claimed to have moved from Centralia in a defective condition.

A. Yes, I have heard the evidence.

Q. You have checked over the causes of action as to those cars? A. Yes, sir.

Q. Were you on duty at the time these trains moved, Mr. Nixon? Did you inspect these trains in which these cars were supposed to be contained?

A. I presume possibly that I did.

Mr. LIST.—I move to strike that, if your Honor please.

The COURT.—The motion will be granted.

Q. (Mr. WINDERS continuing.) Were you inspecting those cars that went out in those trains the morning of the second of September?

(Testimony of Charles L. Nixon.)

A. Yes, sir, I was there.

Q. Were there any records kept of the inspection at that time, Mr. Nixon?

A. None so far as I know. None kept by me or Mr. Alsip.

Q. You and Mr. Alsip were inspecting trains on that morning, were you not?

A. Yes, sir; and all the other mornings.

Q. Did you work together?

A. Yes, sir; we worked together.

Q. That was necessary for other reasons than inspection, [125—90] Mr. Nixon?

A. We thought so.

Q. Now, it has been testified that ordinarily these cars are inspected and slight repairs made before they are put into the train. Is that correct, Mr. Nixon, in normal times?

A. Yes, in normal times.

Q. Just tell the jury when and what time these cars leaving Centralia on this day,—all cars leaving Centralia on the second day of September, leaving in the morning,—were inspected and whether they were inspected before they were put into the train or after?

A. They were inspected after they were put into the train.

Q. Who is Mr. Alsip?

A. He is trainmaster for the Northern Pacific.

Q. How long would you work on a train? Would you work on the train inspecting and re-

(Testimony of Charles L. Nixon.)

pairing until after the road engine was attached or until the train went out?

A. We would wait until the train went out. The last thing we did was to test the air.

A. Did you find on cars moving at this time and other times these grabirons that were bent in against the cars? A. Yes, sir.

Q. Did you find cars that had a coupling lever off or loose? A. Yes, sometimes we did.

Q. What would you do in those cases?

A. In case we could not fix them, we had them set out.

Q. Could you fix a bent handhold?

A. Yes, they were very simple. We carried a short bar. [126—91]

Q. Did you fix the hand levers on these automatic brakes? A. How is that?

Q. These levers on the brakes that were pulled up,—these brake staffs? A. Couplers?

Q. Couplers.

A. We repaired a great many of them with wire. We did not have anything else to do it with.

Q. You repaired them with wire?

A. Yes, take it where there was a connection broke or a link broken, we would take a short piece of wire and repair it so that they could be operated from the outside.

Q. Do you remember seeing Mr. Weeks and Mr. Winter around the Centralia yards?

(Testimony of Charles L. Nixon.)

A. I remember seeing Mr. Winter a time or two. I don't remember seeing Mr. Weeks.

Q. Were you around these trains at the time the trains actually pulled out?

A. Usually we were there until they started to pull out.

Q. Why were you there until they started to pull out?

A. The last thing we did was to make a terminal air test. That was up to us to do before they left.

Q. If these cars, as was testified to by Mr. Winter and as will probably be testified to by the other witness, did come into that yard with a bent grabiron or a step off, or a handhold loose, would those repairs be made under the conditions existing at Centralia during the strike before they were put into the train to go out? [127—92]

A. No, we did not make any inspection of the incoming trains.

Q. You made no inspection and no repairs until the train was made up to go out?

A. That is it.

Q. We will refer here to these Centralia cases. They say that on car 64036 the sill step on the left-hand end of the side of the car near the "A" end was broken. They now have testified that it was clear off. Now, is it a serious matter or much of a task to put on a sill step?

A. It would depend of course on whether the bolts were broken. As a rule it is not, no.

(Testimony of Charles L. Nixon.)

Q. Did you put sill steps on cars that were missing at Centralia during this period?

A. Once or twice.

Q. The repair or fixing of a sill step or straightening out a brake rod,—that would be done after the cars had been switched into the train to go out?

A. We would not find them before that.

Q. You would not look for them before that?

A. No, did not have time.

Q. What is the fact as to whether or not after the road engine was attached to the train and the train had moved some distance you would hold up the train until you could go through your train and straighten out any defects that you could straighten out?

A. We always had that done before they would get out. We inspected the train before we made the air test.

Q. It is alleged that on the second day of September, 1922, [128—93] the following cars at Centralia were hauled out over the main line with the following defects: C. B. & Q. flat No. 90501, the uncoupling lever being disconnected from lock block of coupler on the "B" end; N. P. box-car No. 24620, the lock link of the coupler on the "B" end being broken; N. P. car 63839, with the hand brake chain broken; N. P. 64036, with the sill step on the left-hand end broken; and N. P. flat 61753, with the handhold on the right-hand side,—I will not ask you that question just now,—what is your testimony as to whether or not when those trains

(Testimony of Charles L. Nixon.)

actually left Centralia out on their road runs those defects existed in those cars?

A. I don't think they existed when they left. If they were defective in the first place, because sill steps and all those defects such as undercut levers and more especially the handholds would be looked after pretty close.

Q. Were there any trains that you permitted to go out from Centralia with cars containing defects as testified to here existing when they went out on the main line? A. Not to my knowledge.

Q. Did you and Alsip inspect each car in these trains?

A. He went up one side and I the other. I don't know just what time they got more help there; but I don't think they had it at that time.

Q. Now, you have heard the testimony here as to a log fouling the end handholds. Did those Northern Pacific cars have bunks on them?

A. Yes, they had long bunks. [129—94]

Q. Did those bunks extend up above the floor, and if so, how high? A. Six or eight inches.

Q. So that when the log would lie on that car the log itself would be elevated six or eight inches above the floor of the car? A. Yes, sir.

Q. Did you ever in your twenty-eight years' experience as a train man or in your experience at Centralia ever see on a log car with bunks or any logging car anywhere a log that could extend down low enough to foul the handhold, or leave less than two inches clearance on the handhold of the car?

(Testimony of Charles L. Nixon.)

A. I can't ever recall a case where it did.

Q. As a railroad man, tell this jury whether in your opinion that is a situation that is possible on a log flat with bunks on it,—a situation so that the log could have its end gotten down low enough, lying on the bunk, to be within two inches of the grabiron on the end?

A. I never saw one do that, because it is elevated eight inches from the top of the floor, and they are loaded lengthways of the car.

Cross-examination.

(By Mr. LIST.)

Q. You went over there July 1st? A. July 2d.

Q. How long did you stay over there?

A. I stayed over there until some time about the middle of [130—95] September.

Q. You were there on September 2d. On September 2d you were there working?

A. I must have been.

Q. I don't want to know what you must have been. I want to know if you were there on September 2d? A. Yes.

Q. You are sure of that? A. Yes.

Q. How many were working there at that time?

A. I don't know.

Q. There was usually somebody working inspecting cars besides yourself?

A. Mr. Alsip was there.

Q. What was he doing?

(Testimony of Charles L. Nixon.)

A. He was helping get the trains out and light repair work,—whatever was necessary.

Q. The same repair work that you did?

A. Yes.

Q. Was anybody else there?

A. Yes, we had some fellows there. I have no recollection of how many or what their names were.

Q. I don't want their names, I want to know how many more men there were on September 2d doing this work besides yourself and Alsip?

A. I cannot tell you.

Q. Would you say there were four or five or more men doing inspecting?

A. There were possibly four or five more men there, but they were not all doing inspecting, because they didn't [131—96] know anything about it. They didn't know anything about defects.

Q. What were they there for?

A. To help whatever repair work they could do.

Q. If you found a defect you would turn it over to them to make repairs?

A. They were there right along with us.

Q. How many were there actually making inspections, besides yourself and Mr. Alsip?

A. There was only one more that I can be positive of.

Q. Three of you? A. Yes.

Q. All three of you, you think, inspected every train that went out of there? Did you inspect

(Testimony of Charles L. Nixon.)

every train that went out of there on September second,—the three of you?

A. Up to the time we were on shift. We usually went to work at seven o'clock in the evening and went off at seven o'clock in the morning after the rush was over.

Q. Your shift was from seven o'clock in the evening until seven o'clock in the morning?

A. From seven o'clock in the evening until most any old time in the morning. We have stayed there as late as ten o'clock.

Q. You and Mr. Alsip and whoever else was there,—you all inspected each train that went out,—that is correct?

A. Yes, sir, at least two of us.

Q. At least two would inspect every train?

A. Yes.

Q. You kept those cars in good condition that went out? [132—97]

A. I would not say good condition.

Q. You made repairs to all penalty defects?

A. That is our intention.

Q. You testify that you did not have any car sent out with a penalty defect such as testified to by Mr. Winter,—that is correct?

A. Not to my knowledge it never did.

Q. If they did not go out in that condition, if they were defective you made repairs to them before they went out?

A. We made repairs all that we saw.

(Testimony of Charles L. Nixon.)

Q. You feel that you kept everything in good shape that went out of there at that time?

A. No.

Q. You think a lot of cars went out of there that were defective?

A. Yes, but I don't think that so many of them had the penalty defects. Those are the ones that are easily detected.

Q. You did not make any record of any trains that you inspected? A. No, sir.

Q. You did not make any record of any car?

A. No.

Q. You did not even make a short memorandum of any car that you inspected?

A. Did not even carry a pencil, I don't think.

Q. You think that the two of you kept those trains in about as good condition, so far as penalty defects are concerned, as they were kept before the strike? A. No.

Q. You think their condition was worse than before the strike? [133—98] A. Yes.

Q. There must have been a good many of those cars got away?

A. Not of the nature of penalty defects. There is a lot of defects on a car that I don't know anything about; but those particular ones are brought to my attention.

Q. So that Centralia at that time was a repair point for penalty defects?

A. I cannot say as to that.

Q. You made repairs there?

(Testimony of Charles L. Nixon.)

A. We fixed anything that was out of order that we could.

Q. Prior to that time that you came from the Union Pacific what work were you engaged in?

A. I have been conductor for the Union Pacific for thirteen years.

Q. Were you conductor on July 1, 1922?

A. Yes, sir.

Q. What kind of service? A. Freight.

Q. Between what points?

A. Centralia and Portland.

Q. The strike went into effect July 1st?

A. Yes, sir.

Q. Was there a strike on the Union Pacific at that time? A. Yes, sir.

Q. Did it affect the Union Pacific?

A. It affected them, yes.

Q. How was it that the Union Pacific could spare you and send you over to the other railroad to do this work?

A. They asked me to go up there and help supervise and help get the trains through on account of the delays they were [134—99] having,—serious delays.

Q. You went up from what point?

A. From Portland.

Q. Long before the strike went into effect they were having those serious delays?

A. No, they had delays the night of the first.

Q. If you got your orders on the first and the

(Testimony of Charles L. Nixon.)

strike went into effect on the first, you got pretty quick action? A. Yes, sir.

Q. You think that was the reason? A. Yes.

Q. Did you have any serious delays on the Union Pacific? A. I don't know. I presume so.

Q. Did you have any trouble getting men on the Union Pacific? A. I don't know.

Q. How long was it before any men were sent in there besides yourself to do additional work? ,

A. Along about Labor Day.

Q. None were sent in July or August?

A. Very few. Yes, I think the Northern Pacific had some of their men out of their departments that came in and assisted.

Q. The question has been raised here, Mr. Nixon, about some railroad men being antagonistic to the Northern Pacific. I assume of course that you know.

Mr. WINDERS.—What is that question?

Mr. LIST.—The question has been raised about some railroad men being antagonistic to the Northern Pacific.

Q. Mr. LIST.—You are not a member of the Switchmen's [135—100] Organization, are you?

A. No, sir.

Q. Are you a member of the Inspectors'?

A. No.

Q. Were you a member of the machinists or any organization that went out on strike?

Mr. WINDERS.—You bet he was not. I object to that.

(Testimony of Charles L. Nixon.)

The COURT.—Objection sustained. It is not cross-examination.

Q. (Mr. LIST.) Now, Mr. Nixon, I am going to ask you if on September 2d, 1922 you made any inspection at all of certain cars that went out in train known as Extra North, engine 1251 and 1611?

A. I don't know. I haven't any record.

Q. Are you able to tell us if Northern Pacific car 61753 was defective and whether you or Mr. Alsip discovered the defect and made any repairs?

A. I am not able.

Q. That is true of all the cars that went out on September 2d? A. I haven't any record.

Q. Have you any record of the orders under which you were sent from the Union Pacific over to Centralia? Were you sent on a written order?

A. No.

Redirect Examination.

(By Mr. WINDERS.)

Q. Have you any feeling one way or the other either for the Northern Pacific or against whoever may be responsible for this lawsuit? [136—101]

A. Not a bit in the world.

Q. You think a whole lot of the United States, just as I do, do you? A. Yes, indeed.

Q. As far as these trains that counsel has been talking about, you didn't keep any number of the engine or the train? A. No, we had no time.

Q. And there were some men that were sent down there for the purpose of doing what they could to

(Testimony of Charles L. Nixon.)

assist after the first of July. There were more men from time to time sent down to Centralia?

A. Yes, very few.

Q. But so far as the inspection of the cars were concerned and seeing that commodities moved through Centralia that was up to you and Alsip and Campbell? A. Yes.

Q. Who is Campbell?

A. Campbell, I think, is supervisor of bridges and buildings for the Northern Pacific.

Q. Supervisor of bridges and buildings?

A. Yes.

Q. For the Northern Pacific?

A. For the Northern Pacific.

Q. Counsel says that you kept all the cars moving. Were there defective cars that you could not make light repairs to that were set out at Centralia?

A. There were.

Q. When you and Alsip and Campbell went along, did you look to see that all the grabirons were on the cars? A. Yes, sir. [137—102]

Q. Did you look to see that all of the brake levers were working?

A. Yes, we found a good many of them disconnected; but, as I told you, we fixed those up with wire.

Q. Did you find brake staffs on these log flats that were bent? A. Many of them.

Q. Did you permit any of those brake staffs to go out if they would not operate? A. No, sir.

(Testimony of Charles L. Nixon.)

The COURT.—Did you understand that last question?

Mr. WINDERS.—I asked if he permitted any cars that had bent brake staffs that would not operate to go forward from Centralia.

The COURT.—Did he prevent?

Mr. WINDERS.—Did he permit them to go forward. I beg your Honor's pardon.

Q. Would it be possible for any inspector to go through that yard while the cars were being inspected, and from the inspection then made determine the condition of those cars when they left Centralia? In other words, would the condition of the cars before they were switched into the outgoing train be any indication as to their condition when they went out of town?

A. No. The more so with logs or with a commodity loaded on a flat car than others, because in a switching movement they are shifted either way with any rough handling.

Q. Have you ever seen any logs shift over so it would get within two inches of the handhold?
[138—103]

A. No.

Recross-examination.

(By Mr. LIST.)

Q. I understood you to say that you inspected the cars and if you found a defect and you notified the repair man and made repairs? A. No.

Q. You made the repairs yourself?

A. We made repairs. Later on in the latter part

(Testimony of Charles L. Nixon.)

of the trouble we had a few that they sent up there. If they were along and we found a handhold bent we would have them straighten it, and we would move on up to avoid delay.

Q. I didn't understand whether you would make those yourselves or not?

A. We made the repairs.

(Witness excused.) [139—104]

**Testimony of William E. Weeks, for Plaintiff
(Recalled.)**

WILLIAM E. WEEKS, recalled, testified as follows:

Q. (Mr. LIST resuming direct examination.) Did you inspect Northern Pacific flat car No. 68327?

A. Yes, sir.

Q. Just state what its condition was when you first inspected it and when it went out in Extra 1616.

A. That is the third cause of action?

Q. That is the third cause of action, yes.

A. No. 68327. The tower on the coupling lever missing on the "B" end.

Q. Referring to the fourth cause of action—car No. 66150,—state what its condition was when you first inspected it and when you saw it leave in train No. 930, engine 1784.

A. Vertical brake shaft. Log loaded on top of brake wheel. Inoperative.

Q. Referring to the fifth cause of action,—what was the condition of Northern Pacific car No. 61611

(Testimony of William E. Weeks.)

when you first inspected it and when you saw it leave?

A. Brake shaft bent over. Car loaded with logs. Inoperative.

Q. The sixth cause of action,—car No. 63242,—what was its condition when you first inspected it and when it left in train No. 930?

A. Vertical brake shaft bent over the car. Inoperative.

Q. Referring to the seventh cause of action,—what was the condition of Northern Pacific flat car No. 68347 when it was first inspected and when you saw it leave in train No. 930?

A. Handhold missing from the “A” end left side. [140—105]

Q. Left side facing that end,—is that what you mean?

A. That would be the left side facing the “A” end of the car.

Q. Was that a side or end handhold?

A. An end handhold.

Q. Referring to the eighth cause of action,—Northern Pacific car No. 67105,—what was its condition when you inspected it and when it left in train No. 930? A. Brake wheel missing.

Mr. WINDERS.—I have admitted that car was defective.

Q. (Mr. LIST.) Referring to the ninth cause of action,—Northern Pacific flat car No. 64764,—what was its condition when it left in train 930 and when you first inspected it?

(Testimony of William E. Weeks.)

A. Both side handholds missing on the "B" end.

Q. Referring to the eleventh cause of action, what was the condition of Northern Pacific flat car No. 67399 when you first saw it and when it left in train 930?

A. Handhold bent in the sill, right side. No clearance.

Q. Was that an end or side handhold?

A. A side handhold.

Q. Referring to the twelfth cause of action,—Northern Pacific flat car No. 65296,—what was its condition when it left and when you first inspected it? A. Brake shaft bent. Inoperative.

Q. Referring to the thirteenth cause of action,—Northern Pacific car No. 61753 on September 2d at Centralia,—what was its condition when you first saw it and what was its condition when you saw it leave? [141—106]

A. Log over handhold on "A" end and right-hand sill.

Q. What effect did that have on the use of that handhold?

A. Gave it no clearance. It could not be used.

Q. Referring to the fourteenth cause of action, what did you observe to be the condition of Northern Pacific flat car number 64036 when it left in train 969 from Centralia?

A. Sill step missing "A" end right side.

Q. Referring to the fifteenth cause of action,—C., B. & Q. flat car No. 90501,—what was its con-

(Testimony of William E. Weeks.)

dition when it left Centralia on the 2d day of September?

A. Lock link disconnected on the "B" end.

Q. Referring to the sixteenth cause of action,—Northern Pacific box-car No. 24620,—what was its condition when it left Centralia on September 2d, 1922? A. Lock link broken. Sharon.

Q. You mean a Sharon coupler?

A. Sharon coupler on the "B" end.

Q. Referring to the seventeenth cause of action,—Northern Pacific flat car No. 63839,—what was its condition when it went out in Extra North 1672?

A. Broken brake chain about one foot from the rear end. Hanging down.

Q. Referring to the eighteenth cause of action,—C. G. W. box-car No. 13330,—what was its condition when it was moved from the interchange track to the Northern Pacific in Seattle on September 7, 1922?

A. The coupler was 30 inches high on the "A" end. [142—107]

Cross-examination.

(By Mr. WINDERS.)

Q. Mr. Weeks, you have been at this work a good many years, haven't you?

A. Yes, sir, quite a few years.

Q. You would not say, would you, Mr. Weeks, that taking this whole bunch of eighteen violations, there was anything serious about them?

A. I don't get your question.

(Testimony of William E. Weeks.)

Q. I say taking this whole bunch of eighteen violations, as you saw them, there wasn't anything very serious about them, was there?

A. The seriousness would be to the men that tried to use them and they would not be there.

Q. Now, a great bunch of these cars, for instance, went out to the Northwest Lumber Company loaded with logs,—to Lake Washington,—to Narco,—you know where that is? A. Yes.

Q. The complaint about them is that when you and Winter looked at them there were some of the grabirons that had been pounded in close, and some of these uncoupling levers were not working, and the most of them, these brake shafts were bent? There wouldn't be anybody going to use those brake shafts or those uncoupling levers, until they got that whole string of log flats out here on Lake Washington?

A. That depends, if I may answer it in my way.

Q. Without going into great detail, you do consider, then, as an inspector of safety, that the character of equipment in the movement being made constituted a very, [143—108] very serious infraction.

A. Yes, I would consider them serious infractions.

Q. You felt that these log flats,—they were practically all log flats, weren't they, Weeks?

A. Yes, I think they were.

Q. Moved undoubtedly off logging railroads onto

(Testimony of William E. Weeks.)

the company tracks. Most of these log flats are loaded in some logging railroad, aren't they?

A. Yes, sir.

Q. You would think that a loaded box-car, loaded with commercial freight going over the Cascade mountains, that had something wrong with its air, something wrong with its actual ability to couple, would be a great deal more serious than a bent handhold or a missing coupling lever on a log flat?

A. No, I would class them in the same seriousness.

Q. In other words, as an arm of the government you would class anything of this character, one as serious as the other?

A. Anything that I considered in violation of the Interstate Commerce Commission, yes.

Q. Now, you went out to Auburn that morning, did you, Weeks?

A. I cannot say unless I can see my travel sheet.

Q. That book you have got there,—doesn't that show where you worked the day before?

A. Not necessarily.

Q. You might look and see, Mr. Weeks.

A. (Looking at book.) No, Mr. Winders, this shows only the last violation that was filed, which was filed June 21, approximately 90 days before that. This is not the [144—109] regular inspection book.

Q. So that that book only shows the time previous that you have made a violation report?

(Testimony of William E. Weeks.)

A. That we filed any suits for prosecution; yes, sir.

Q. Do you remember of staying all night in Auburn in the last of August or about Labor Day?

A. No, I don't think I did.

Q. You live in Seattle, do you, Mr. Weeks?

A. I live in Tacoma.

Q. You were with Winter, I suppose, when he made these various examinations? A. Yes, sir.

Q. Does your book give us any more accurate time as to the time you discovered these defects than Winter's?

A. I don't know whether it does. If you will specify what you want I will give you what I have.

Q. We will just start right out now and take this bunch of cars going to Renton and Narco. Car No. 66150? A. What count is that?

Q. The fourth count. What time did you examine that car?

A. The way the notes are made in the office, Mr. Winders, in showing the—

Q. The question now is, what time, if your record shows, did you examine that car?

A. The record shows first inspected from eight until 8:50.

Q. From 8 until 8:50?

A. May I read my notes?

Q. Does that have to do with the time?

A. It does. [145—110]

Q. Go ahead.

(Testimony of William E. Weeks.)

A. The following cars first inspected 8 to 8:50, and all eight cases handled over the main line in regular local freight train containing lumber, hay, and other revenue in this train.

Q. You have them all bunched as between 8 and 8:50?

A. That is the time we first discovered the cars to be defective.

Q. Have you got any record of any time that you examined them after 8:50 in the morning?

A. The time that they departed only.

Q. What time did they depart?

A. 9:50. That is the time the train started to move.

Q. As a matter of fact, your record shows that all of the eight cars going out towards Seattle were inspected between 8 and 8:50 except when they went out in the train? A. Yes, sir.

Q. So that, as a matter of fact, if Mr. Winter examined a car at 9:45, you were not with him when he made that examination? A. Let us see.

Q. What car numbers have you got there between 8 and 8:50?

A. Between 8 and 8:50, 68347, 63242, and 61611.

Q. Now, 61611 is the fifth cause of action?

A. Yes, sir.

Q. Concerning which he testified that he made an inspection at 9:45. If he made an inspection at 9:45, and you made your last inspection at 8:50, you were not with him [146—111] when he made that last inspection?

(Testimony of William E. Weeks.)

A. We don't necessarily trail each other in that way.

Q. Anyway, you did not look at any of these cars until the train went out of the yard?

A. I don't say that I did not look at them. I said I kept no record.

Q. I understood you to say that you did not examine them after 8:50 until you saw the train go out of the yard?

A. I cannot say that I did not. I say that I kept no record.

Q. I knew that you would say that, because I knew that it was a fact. A. That is a fact.

Q. This train went towards Seattle, didn't it?

A. 930. I would not say. It went north. It must have gone towards Seattle.

Q. It would have to have gone between Auburn and Kent to have gone north. As a matter of fact, it went over the belt line. It went around to Renton. Let us look at 67219. A. 67219.

Q. That is the first cause of action, Mr. Weeks,—and 61585. A. 67219.

Q. When did you look at that car?

A. Handhold bent against car. No clearance.

Q. When did you examine that car according to your records? A. About 9:30.

Q. About 9:30? A. Yes. [147—112]

Q. How about the next car,—61585?

A. Let us see what that says. About 9:45.

Q. You must have had to skip some to get up at 9:50 and watch this other train go out. These two

(Testimony of William E. Weeks.)

cars were on different trains. These two cars that you examined,—one at 9:30 and one at 9:45, did not go out on this train that left at 9:50.

A. No, but when they got on the lead they would be on the same track.

Q. When you left those cars at 9:45,—67219 and 61585,—was the road engine attached? That was thirty-five minutes before the train left?

A. I can't say.

Q. Now, then, let us see. There was another train left at 10:10,—car No. 68327,—third cause of action,—what time did you look at that car?

A. About nine o'clock. Nine A. M.

Q. About nine? A. Yes.

Q. You probably went from the one train over to that train,—you went from the first train which you testified you examined at 8:50,—examined that train, and got over to the other train about 9:30.

A. I can't say.

Q. Anyhow we have got nine cars here that you examined between 8 and 8:30 and 8:50? A. 8:50.

Q. Then you examined another train at 9:30 and 9:45, and you examined this car when?

A. This car here (indicating)? [148—113]

Q. Yes. A. About nine o'clock.

Q. Getting through with this first train at 8:50, examining this train at nine,—the second train,—and then got over to the third train you are testifying to, and you were through with that about 9:45, then you went up to see the train go out at 9:50 and came back to see a train go out at 10:10,

(Testimony of William E. Weeks.)

and then go over to see a train go out at 10:20. These trains all go out from different sides of the yard.

A. Our movements to see three trains depart would probably cover 100 feet.

Q. How long are these big freight drags? Give us some idea?

A. It depends on how many cars they have.

Q. How many cars do you think they have? Do you have any independent recollection? A. No.

Q. These cars when you saw them, were they being switched into the train or were they already in the train,—into these three trains?

A. 68327,—my notes says that I saw it leave.

Q. The question is when you examined that car some little time before the train did leave, was it in the train or was it in a switching movement?

A. I can't say.

Q. Can you say as to any of these cars when you saw them, whether you saw them in a train actually or in a switching movement?

A. As to any of these cars you were speaking about, I cannot; [149—114] but as to the Centralia cars, I can.

Q. Now, we will leave Auburn and go to Centralia. Did you stay over night in Centralia?

A. Yes, sir, I generally do. I think I did.

A. JUROR.—If that witness will face this way we can hear him much better.

Q. (Mr. WINDERS continuing.) All right,

(Testimony of William E. Weeks.)

What time did you examine car No. 61753? That is the first Centralia car.

A. About 7:10 in the morning.

Q. About 7:10? That is the car on which the log extended over within two inches of the grabiron, isn't it, Weeks? A. Yes, that is the one.

Q. Did you ever see that happen before?

A. Yes.

Q. Have you? A. Yes.

Q. Do you know whether this car had any bunks on or not?

A. Why, the majority of them do, Mr. Winders. Some of them do not.

Q. To what is this end handhold attached?

A. The end handhold is applied to the end sill. On the Northern Pacific flat cars, as a general thing they have a piece of sheet iron. The grab-iron is applied. It has a foot on it. It causes it to stand up. They apply that very close to the top of the car. That question has been raised by me with your department,—the mechanical department,—before now, that when—

Q. Irrespective of any dispute as to the proper way to [150—115] put on those things, it was not violating any law the way it was on there without this log was on it?

A. You can apply it any way as long as you have the required clearance.

Q. The Northern Pacific officials have been applying it this way a good many years, haven't they? A. I naturally think so, yes.

(Testimony of William E. Weeks.)

The COURT.—(Addressing the jury.) Bearing in mind the cautions that I have heretofore given you, the same as though they were repeated in open court,—bearing these cautions in mind, we will adjourn until to-morrow morning at ten o'clock.

(Recess to Wednesday, June 20, 1923, at ten A. M.)

Wednesday, June 20, 1923, 10:00 A. M.

Continuation of Proceedings. All parties present.

Q. (Mr. WINDERS resuming cross-examination.) Mr. Weeks, I thought that I had left Auburn, but I want to go back to the fourteenth cause of action. Maybe that is Centralia, I am not sure. In that case you are referring to what car? Well, I will tell you. 64036 Centralia.

A. Fourteenth Centralia on 9-2?

Q. Yes. A. 64036, yes. [151—116]

Q. You say that the sill step was completely broken off at the end of that car?

A. Yes, sir.

Q. What engine pulled the train that you claim hauled that car out of the yard?

A. Engine No. 1263.

Q. Engine 1263? A. Yes, sir.

Q. 1263? A. Yes, sir.

Q. At least that was the engine that was attached to the train in which this car was contained at the time you saw it?

A. That was the engine that was hauling the train as they pulled out of town?

(Testimony of William E. Weeks.)

Q. Where were you when this train pulled out of town?

A. I was in the south end of the yard.

Q. South end? A. Yes, sir.

Q. Is that the end away from the depot or towards the depot?

A. Towards the depot.

Q. How close to the depot?

A. I should judge that is approximately four or five city blocks; four city blocks perhaps.

Q. You said yesterday a quarter of a mile.

A. Did I say a quarter of a mile?

Q. I understood you to say that. Maybe it was Mr. Winter.

A. I think it was Mr. Winter, Mr. Winders.

Q. Four or five city blocks? [152—117]

A. Yes.

Q. Did you stand alongside of this engine as it went out?

A. No, I can't say that I did. My observation is to see that the engine that we have is the one that is pulling the train, and then to notice the defects to be sure that they leave as prescribed.

Q. If this engine 1263 did not actually pull this train down on the Willapa Harbor country where this car was going, it would be pretty good evidence that there was another engine went out on that train, wouldn't it?

A. It would be pretty good evidence, but it did not do that, under my observation.

Q. When it left about a quarter of a mile from the depot it had this engine on it?

(Testimony of William E. Weeks.)

A. It did, when it passed the depot.

Q. Were you at the depot when it passed?

A. I was not at the depot when it passed, but the train did not stop.

Q. The train did not stop? A. No, sir.

Q. You are certain? You are just as positive that your record that has the engine pulling out this train as engine 1263 is correct, as you are any part of the record that you made?

A. I am so stating under oath. I would not come here if I did not.

Q. I say you are just as certain of this as anything else you testified to?

A. Yes, sir.

Q. The despatcher's sheet would pretty well show accurately [153—118] what engine went out?

A. It should.

Q. The conductor who made up the wheel report handling those cars would know, wouldn't he?

A. He ought to know.

Q. He would be with the train and the cars all the time, wouldn't he?

A. Yes, he should be.

Q. He would be? A. He should be, I say.

Q. Now, then, let us turn to another Centralia case. You were in Centralia, were you, Weeks, on the 2d of September?

A. Yes, sir.

Q. Take the seventeenth cause of action,—car No. 63839.

(Testimony of William E. Weeks.)

A. Seventeenth cause of action,—car No. 63839, yes, sir.

Q. Before you answer that question,—Mr. Winter has read the car number in the train immediately ahead of your alleged defective car and the car immediately behind. The Government requires that you make that record?

A. Yes, sir.

Q. So, on every car that you inspect, if you live up to the instructions of the Government, you must take the car on either side of this car?

A. Every car that we report for prosecution, we must.

Q. Every car that you report for prosecution you must. It is your duty when you make any report to give the car ahead and the car behind the one that you allege to be defective?

A. Yes.

Q. That is part of your duty? [154—119]

A. Yes.

Mr. LIST.—If you will allow me to correct to this extent—

Mr. WINDERS.—I am examining the witness.

Q. (Mr. WINDERS continuing.) If you do not give that or do not have it in your book the number of these cars in front or behind, you are not complying with your duty to the Government?

A. I would not have complied with the instructions, which I have.

Q. The instructions contemplate your duty, do they not? Your duty to the Government is to follow your instructions as you get them?

(Testimony of William E. Weeks.)

A. Absolutely.

Q. Now, you tell me the car that was in front and behind this other Centralia car No. 63839.

A. On the "A" end we have Northern Pacific flat car 65642, and on the "B" end we have 62213.

Q. Your record is different from Mr. Winter's, is it not?

A. My record is?

Q. Yes.

A. I don't know. I took my record from the car.

Q. Mr. Winter had another car on one end. Were you with him when you made the memorandum of these cars?

A. I can not say we were beside each other, because we don't do that.

Q. Mr. Winter was mistaken when he said you were with him when he discovered those defects?

A. If you will let me answer and explain—

Q. I am asking you this question. You have been on the [155—120] witness-stand for the last twelve years?

A. Yes, sir.

Q. In this character of cases?

A. What is your question?

Q. (Question read.)

A. I would not want to say that Mr. Winter was mistaken.

Q. Very well. That is your answer to the question?

A. It is.

Mr. HUGHES.—If you have any explanation that you want to make, you may make it.

(Testimony of William E. Weeks.)

Mr. WINDERS.—If your Honor please, I submit that he has answered that question.

The COURT.—You may explain, if you have any explanation to make.

The WITNESS.—In going through the yards before a train is made up, looking for these things—

Mr. WINDERS.—The explanation is as to whether or not he was with Winter. I don't think he should turn himself loose and argue the case to the jury.

The COURT.—Objection overruled. Explain your answer.

The WITNESS.—When we are looking for these violations, we are going through the yards, it is not necessary for us to come along either side of the car. When the train is departing we are together to be sure that the defects to be found are leaving as at the time we found it at the time of the inspection. We try to be, one on either side. Should there be a defect on that [156—121] side of the car Mr. Winter is on, I would climb over and make an effort to see that that same defect prevailed that did prevail at the time that we first inspected the car. In other words, we want to be absolutely sure that the car has the defect leaving as we have found it.

Q. (Mr. WINDERS.) That is your answer. You are certain that on every defect, if you don't see it first, and Winter sees it and calls you over and you look at it?

A. Yes, sir.

(Testimony of William E. Weeks.)

Q. You say you want to be sure they are still there. Now, in Centralia have you any record of more than one examination?

A. I have a record showing these cars—

Q. The question was, have you any record? You can answer that “yes” or “no.” Have you any record of an inspection or examination when you say you found the defects,—have you a record of any inspection or examination between that time and the time you say that you saw the train go out?

A. I have no record of any other.

Q. You also testified that you had not any independent recollection about these cars?

A. No, sir.

Q. You examine a great many cars, don't you, Weeks?

A. Yes, sir.

Q. All you can testify to is from the record that you make?

A. Yes, sir.

Q. Now, in order to clear up something that may be in the minds of the jury, counsel yesterday asked Mr. Winter on all these alleged crooked brake staffs if there was [157—122] another brake staff on the car. Do cars have more than one brake staff?

A. There is a number of cars that have more than one brake staff.

Q. In this character of log flats?

A. Not on log flats.

Q. Has any of this class of equipment that is be-

(Testimony of William E. Weeks.)

ing complained of here,—is there more than one brake staff on it?

A. I don't know of a Northern Pacific car, Mr. Winders, that has two brake staffs on it.

Q. There never has been more than one on that class of equipment?

A. Only one.

Q. Tell this jury how many penalty defects there can be on a box-car or freight-car?

A. I don't know just what you mean.

Q. Is there not something over two hundred things that can be got out of order on a box-car that are in the confines of this Act that is being sued on?

Mr. LIST.—That is objected to. The law very specifically sets out,—and very definitely,—the penalty defects. It is not necessary to have the witness review the law to the jury. The Court can do that if necessary.

The COURT.—It is not material except as bearing on the opportunity of the witness or the time required to examine the different cars that he claims to have examined. I see no other materiality. I will overrule the objection. [158—123]

Q. (Mr. WINDERS continuing.) Just tell the jury now how many defects under the Safety Appliance Act are covered by that Act and the orders of the Commission issued pursuant thereto, if you know? A. Any defect—

Q. The number. A. I cannot tell.

Q. Do you know the number, Mr. Weeks? Is there as many as two hundred?

(Testimony of William E. Weeks.)

A. No, there is not.

Q. Is there as many as one hundred ?

A. I would not like to answer.

Q. You would not. There are a great many, however?

A. Yes. If you can let me—

Q. Mr. Weeks, please let me examine you now. If learned counsel wants you to argue the case at the close, he might have that permission.

Mr. LIST.—That is not necessary, Mr. Winders, at all. I object to it.

The COURT.—Objection sustained.

Q. (Mr. WINDERS continuing.) It is your sworn duty as an inspector of this Commission to see and find any defects existing on cars that go out of a terminal, isn't it?

A. It is; yes, sir.

Q. What time did you get into the Centralia yard on the morning of the 2d day of September?

A. I cannot say.

Q. Look at your record and tell us the first car you inspected,—the time of your first inspection in the [159—124] Centralia yard on the morning of the 2d of September?

A. The first inspection shows,—the first one was found about six A. M. There are three cars on that?

Q. Six A. M.?

A. Yes, sir.

Q. So that you went to work at least at six o'clock in the morning?

(Testimony of William E. Weeks.)

A. Yes, sir.

Q. How long did you stay in that yard that day?

A. I cannot say. I have no method of telling you that.

Q. Do you remember the conditions? Was there any difficulty in the Centralia yard at that time, Mr. Weeks?

A. Why, just what do you mean, Mr. Winders?

Q. I mean just what I said. Was the company laboring under any burden at that time in the Centralia yard? Any unusual burden?

Mr. LIST.—I object to that as indefinite and uncertain.

Q. (Mr. WINDERS.) Was there a strike on in the Centralia yard?

The COURT.—Objection overruled.

Q. Was there a strike on?

A. Yes, sir.

Mr. LIST.—Exception, if your Honor please.

The COURT.—Exception allowed.

A. I have been told there was a strike on.

Q. Isn't it a fact that your attention was called to the fact that in the Centralia yard, the Auburn yard, and other yards of the Northern Pacific after a train was made up and defects were repaired, either the strikers [160—125] or sympathizers with the strikers would come along, cut the air hose, and knock off grabirons—

Mr. LIST.—I object to that, as incompetent, irrelevant and immaterial.

The COURT.—Objection overruled.

Mr. LIST.—Exception.

The COURT.—Exception allowed. The strike would have something to do with the nearest available repair point. It might be considered by the jury as to whether the cars might not have been put out of order after the inspection before the train left the station.

Mr. HUGHES.—May I make this statement at this time: I don't want to be put to the trouble of making these objections all through on these same questions. I take it that counsel will ask the same questions, and your Honor will make the same ruling. So if your Honor will consider that a similar objection is made to each and every question along this line. It is the Government's contention that it is immaterial and irrelevant to the issues. We contend that the duty imposed upon the railroad companies is absolute, and we therefore object to any testimony in which they seek to excuse themselves by reason of the strike, because the statute, I think, is clear. There is no exception or excuse.

The COURT.—What is your position, if the Court holds they have got to operate the road, and the repair men and the inspectors are on strike, and [161—126] they are put in position where they can't operate because there are no men to inspect and repair the cars? What is their duty?

Mr. LIST.—They have not taken the position that there were no men to make these repairs. In fact, the evidence so far shows there were men at Centralia to make repairs. In fact, one witness

(Testimony of William E. Weeks.)

has gone as far as to state that so far as he knew there were no cars went out with penalty defects. If they were able to meet the situation as officials, it don't make any difference whether the employees were out on strike or not. They have already put a witness on the stand. That is their position here, that the car was not defective. That is the only position they have taken.

(Argument.)

The COURT.—Objection overruled.

Mr. HUGHES.—Does your Honor hold that they may into the strike situation?

The COURT.—Yes, but not going to elaborate on it. I will allow this question to be answered.

Mr. LIST.—It may be understood, your Honor, that instead of objecting to every question asked, we reserve the right to move to strike.

The COURT.—So far as that one question is concerned, it will be so understood.

Q. (Mr. WINDERS continuing.) You have testified that you had learned that there was a strike down at Centralia. I will ask you if your attention was not called, both [162—127] at Centralia and Auburn,—and if you were in the Tacoma yard, and in the Ellensburg Northern Pacific yard, and in Spokane,—that after trains had been made up and the road engine had been attached, either the strikers or their sympathizers came along and cut the air hose, damaged the angle cocks, and otherwise attempted to render the equipment defective?

A. I never saw it. I have been told that.

(Testimony of William E. Weeks.)

Mr. LIST.—I object to that as incompetent, irrelevant and immaterial.

The COURT.—Objection overruled.

The WITNESS.—I have been told that.

Q. (Mr. WINDERS continuing.) So you do know, do you not, that there was considerable trouble around Centralia and Auburn?

A. I know only what I was told.

Q. Who was inspecting cars in the Centralia yard when you went on duty at six o'clock A. M. the second day of September, 1922?

A. I do not know.

Q. Are you acquainted with Mr. Alsip, train-master? A. No, sir.

Q. You don't know him? A. No, sir.

Mr. WINDERS.—Stand up, Mr. Alsip.

(Mr. Alsip stands up.)

Q. Do you remember seeing Mr. Alsip down there that morning?

A. I don't know whether I did or not. I have seen the man some place, yes.

Q. What time did the inspection crew of a train sending a [163—128] train out,—what is the last thing they have to do to the train?

A. The last thing they generally do is to inspect the air,—test the air of the air brakes.

Q. When is the air tested with reference to the attaching of the road engine to pull the train out of the yard?

A. After the road engine is attached.

Q. When the inspection crew has tested the air

(Testimony of William E. Weeks.)

and the train is ready to go, they give the information upon which the train starts, do they not?

A. Why, they take down the blue flag, as a general thing.

Q. When they have coupled their air and made their inspection, and the rest of the train crew is advised, the train in the ordinary course immediately departs, does it not?

A. That is, if the engineer has the orders and the signals given by his conductor.

Q. Will the conductor give him his signals until they get a clearance from these inspectors who have inspected the train and coupled up the air and tested the air?

A. Cases have been known on your road where it has been done.

Q. Has there? A. Yes, sir.

Q. We have a pretty bad road?

A. No, I would not say that you have a bad road.

Q. The Northern Pacific has one man who does nothing else, does he not,—one of our oldest men in the service,—but go around and see that everybody is keeping up to notch,—isn't that Mr. Norton's business? A. Yes, sir.

Q. In the ordinary operation, is it not a fact that when the [164—129] men inspect the train and see that the air is hooked up and the air is tested,—when they give the conductor that information the train starts?

(Testimony of William E. Weeks.)

A. Those are the instructions that are issued, yes.

Q. At least you will agree with me that that is the instructions? A. Yes.

Q. Then, that being true, you would not let a train,—if you were in the Centralia yards,—go out of there, if you felt there was anything wrong with the air, would you?

A. I have no authority to hold your trains.

Q. You have not? A. No, sir.

Q. It is a pretty serious matter to send a train out if there is anything the matter with the air, is it not? A. Yes.

Q. They don't use hand brakes on these trains, do they, when the trains are being operated?

A. Not to my judgment.

Q. No, and it would be a pretty serious offense to send a train out with anything wrong with the air, wouldn't it, in the view of the Government?

A. Well, there could be several things wrong with the air and not violate the law.

Q. Will you please answer my question. I say, in the view of the law that you represent it would be a pretty serious offense to send a train out if the air was inoperative.

A. Oh, if it was inoperative, yes.

Q. And to determine whether it is operative, it is necessary, [165—130] and at least the rule,—that an absolute test be made just as the engine departs? A. Yes, it is.

Q. Neither the engineer nor the trainmen do

(Testimony of William E. Weeks.)

that, do they? A. No, sir.

Q. It is contrary to the rules of their organization, is it not? That has got to be done by car inspectors, hasn't it? A. At terminals.

Q. At terminals? A. Yes, sir.

Q. So that to move any car through the Centralia terminal it was necessary to have men there who understood those things, as well as the other matters incident to the inspection of the cars?

Mr. HUGHES.—I object to this line of cross-examination.

Mr. WINDERS.—I will withdraw the question.

The WITNESS.—Repeat that question.

Q. (Mr. WINDERS continuing.) So the fact remains that there were inspectors of the railroad along these two or three trains that you are talking about when you say you were in Centralia there at the time these trains departed?

A. I would not say to that, Mr. Winders. I cannot answer it.

Q. Can you answer this? Did you see any trains depart from Centralia on the 2d day of September in which the inspectors were not around that train and on and in the vicinity of that train at the time the train departed? [166—131]

A. Why, I have no notes about that. And I would be testifying from memory. I cannot answer your question.

Q. Ordinarily you go into a yard and you make your inspection of the cars before they are switched into the outgoing train?

(Testimony of William E. Weeks.)

A. No, not necessarily.

Q. Well, you said you did at Auburn. Now, did you at Centralia?

A. My notes show that we saw these cars switched at Centralia.

Q. All right, you saw them switched at Centralia. All right, sir. Had you examined them while they were being switched, or before they were being switched?

A. I can only testify from my notes.

Q. Do your notes show that you examined them while they were being switched?

A. May I read?

Q. You can tell me.

A. Saw them switching and put in train.

Q. When did you first examine a car?

A. These cars were first inspected about six A. M.

Q. I am asking you if you examined them before they were switched,—the first time,—or after they were switched?

A. I cannot answer you that.

Q. You can't say that you examined them after the first examination, either, can you, excepting to stand and see the train go by when it started out?

A. I can say that I inspected them as they went by.

Q. I say you are not telling this jury that you inspected those cars after the first time you inspected them, when [167—132] you say you don't know whether it was when they were being switched or not, except when you stood and saw them go by?

(Testimony of William E. Weeks.)

A. I did not examine them that I know of. I have no notes of that.

Q. You were on the same side of the train as Winter, I assume? A. I cannot say to that.

Q. Well, were all of these defects on the same side of the train? A. I cannot say as to that.

Q. If you and Winter were on the same side and there were some defects on the other side, you could not see them as the train went by?

A. If that was so, we could not see them. We don't generally work that way.

Q. If he says you were on the same side of the train, he is mistaken?

A. I don't say whether we were on the same side or not; but I do say we saw those cars leave.

Q. Now, let us go down to the measurements of the height of this draw bar down at the yard?

A. What car is that?

Q. C. G. W. box-car No. 13330. Did you have your rule with you that morning, Mr. Weeks?

A. Very seldom without one, Mr. Winders.

Q. I asked if you had it with you that morning?

A. Yes, sir.

Q. Tell us where you found that car?

A. That is No. 13330? [168—133]

Q. That is C. G. W. box-car 13330. What time did you see that car?

A. About eight A. M., Mr. Winders.

Q. Where was the car when you saw it?

A. On the G. N. interchange.

Q. Where is that?

(Testimony of William E. Weeks.)

A. Near the Hanford Street yard. Track No. 4.

Q. Where is that?

A. That is down west of your mill yard. West of there, between that and that waterfront.

Q. Whatcom Avenue?

A. I don't know what avenue.

Q. As a matter of fact, the interchange tracks are in Whatcom Avenue,—that is they are not in the paved part? A. I cannot say as to that.

Q. I guess the jury must all of them know. We call it Railroad Avenue until we get down to, I think, Atlantic Street. Then it is called Whatcom, and then I guess it is called East Marginal Way. Anyway it is on that street?

A. It is on that waterfront street.

Q. Down there near the Hanford Street dock of the Port? A. Yes.

Q. As you go down along the waterfront there, the jury may remember that in the yards of the Northern Pacific we have a great many tracks in there? A. Yes, they are over east of that.

Q. These transfer tracks are between the city's elevated line,—which is not elevated at that point,—

A. Yes.

Q. —and the paved part of Whatcom Avenue.
[169—134]

A. And the Milwaukee transfer tracks.

Q. And the city has their street car tracks in the streets. Then, of course, these tracks are in the street?

(Testimony of William E. Weeks.)

A. Yes, if the street car tracks are in the street, I have an idea they are in the street too.

Q. There is a great deal of traffic on that street?

A. Automobile traffic.

Q. A great deal of traffic and a great many industries down around there? A. Yes.

Q. What is that track used for?

A. Why, it is used as an interchange between the different systems where cars are delivered from one road to another.

Q. In other words, you know that this car came from the Great Northern? A. Yes, sir.

Q. The Great Northern brought that in with some more cars and set them on this interchange?

A. Yes.

Q. They were to go to some point on the Northern Pacific? A. Yes, sir.

Q. They were setting on that track at eight o'clock? A. Yes.

Q. How long did you stay there?

A. Well, we saw that car hauled over at 8:30.

Q. Where did you see it hauled? Into the yard?

A. Into the N. P. yard.

Q. The N. P. yard is about how far from where this car was standing? [170—135]

A. You mean to get into the yard?

Q. Yes.

A. Well, they would have to haul it,—oh, I should judge in the neighborhood of half a mile, and then back it down into the track. They would have to haul it off the transfer track onto the lead.

(Testimony of William E. Weeks.)

Q. You found a car on either side of this one?

A. Yes, sir; two cars.

Q. Was there any other way that the Northern Pacific could get this car into its yard than the way they did? A. No, I don't think so.

Q. They did not haul it any farther than they had to haul it to get it into their yard, did they, weeks?

A. No, I would not think so.

Q. Did you have information that there was a strike on that affected Seattle also at that time, Mr. Weeks?

A. Yes, sir, from just reading the newspapers. We had no official information.

Q. Your visit to these yards, of course, rather impressed that on your mind? A. Yes, sir.

Q. Is it your opinion, Mr. Weeks, knowing the conditions which you did know at that time, that it would have been reasonably safe for any man,—official or new employee of the Northern Pacific,—to go out on that transfer between the street car track and Whatcom Avenue and attempt at that time to have shimmed up or repaired this draw bar?

Mr. LIST.—That is objected to. It is a matter for this Court to say whether the strike sets [171—136] aside the plain provision of the law.

The COURT.—I will hear from Mr. Winders on that.

(Argument.)

The COURT.—Objection overruled.

Mr. LIST.—Exception.

(Testimony of William E. Weeks.)

A. It would have been as safe there as any other place on the road, in my opinion.

Redirect Examination.

(By Mr. LIST.)

Q. Have you made inspections on the interchange track?

A. Yes, I have made different inspections along there.

Q. Have you made a number of inspections there prior to the time the strike went into effect?

A. I have no records to show that I made any other inspections only this one.

Q. I mean had you ever made any inspections at this interchange track prior to the strike?

A. Oh, yes.

Q. Prior to that time what character of repairs were made there,—prior to the time of the strike?

A. That is something I cannot say, as to repairs they made there.

Q. I don't mean in detail, but just in a general way. Were they light or heavy, or were there any made there before the strike?

A. In answer to that question I would say that the inspections that are made at interchange points are made for the purpose of determining whether the cars are defective. [172—137]

Mr. WINDERS.—I object to that question and move to strike that answer on the ground that it is not responsive.

The COURT.—Objection overruled. Don't try to interpret the law.

(Testimony of William E. Weeks.)

Mr. LIST.—I understand, your Honor. I will try not to.

The WITNESS.—The idea of making inspections at interchanges is merely to see that defective equipment is not interchanged between the two roads.

Q. (Mr. LIST.) You say the track on which this car was placed was open at only one end or open at both ends? A. They are open at both ends.

Q. The engine number involved in the fourteenth cause of action, you testified was engine 1263?

A. 1263.

Q. I believe you also testified that the train in which the car was hauled was train No. 969?

A. Yes, sir.

Q. Where did you obtain that information?

Mr. WINDERS.—I object to that, if your Honor please.

Mr. LIST.—You asked him where he obtained the engine number.

Mr. WINDERS.—I will withdraw the objection.

A. From some member of the train crew we ascertained that.

Q. (Mr. LIST.) Now, Mr. Weeks, regarding the flat car that we were talking about yesterday on which you testified the log fouled the end handhold,—I want to ask you to state to the Court and jury just how that is constructed,— [173—138] that is, with respect to the location of the end sill and the floor of the car. Does the end sill come up to or is it below the top of the deck of the car?

A. In Northern Pacific flat cars, as I remember,

(Testimony of William E. Weeks.)

the end sill is about 6 X 11, or perhaps 12,—11, I think it is,—and the side sills are about fourteen inches deep. The lower end of the side sills are notched approximately three inches, and this end sill is set down in that and extends above the top of the side sill and the center sills also approximately two inches, or an inch and three-quarters. The decking is then laid behind the end sill over the top of this flat car.

Mr. WINDERS.—You are talking about this car in question?

The WITNESS.—I am talking about the construction of the Northern Pacific flat cars, Mr. Winders.

Mr. WINDERS.—They are all the same?

The WITNESS.—Yes. That makes the top of the car uniform. In other words, the top of the car with the decking on it is the same height as the end sill. The end grabiron is applied near the top of the end sill. Some cases they are not more than a half inch below the end sill. Sometimes they are up flush. Very seldom are they below an inch or an inch and a half on those flat cars. Inside the end of the grabiron is bolted about 24 inches from this end sill, the outside coming out within a few inches of the end sill. The inside arm, or the one towards the [174—139] center of the car, in the majority of cases, is fastened—

Mr. WINDERS.—I don't care to hear about a lot of other cars. I am talking about this flat car.

The COURT.—Objection sustained.

(Testimony of William E. Weeks.)

Mr. LIST.—On the cross-examination yesterday of both Mr. Winter and Mr. Weeks there was an attempt made to show that it was impossible to have a defect of this kind on any kind of flat cars. We certainly have a right to go into the general aspect of the situation, regardless of what was on this car. They had Mr. Nixon testify that it was impossible for a defect of this kind to occur. Mr. Nixon's testimony was not confined to this particular car.

The COURT.—I will have to sustain the objection. If he wants to explain how the handhold could be fouled by the log on the car in question, he may do so.

Mr. LIST.—I am going into that, your Honor, in just a minute.

Q. Mr. Weeks, will you step down and explain to the jury, if you can, with these books and this table just how the logs fouled the handholds on this car in question?

A. The grabiron is applied within one inch, we will say, or close to the top of the flat car. It stands out here (indicating) approximately two or two and one-half inches. The car was loaded with logs. Some were crooked. Some were larger at one end than at the other. They would be up on this bump, wherever it was, and this [175—140] end could stick down and foul this grabiron, as was done in this case. I have a cut that will show it.

Mr. WINDERS.—The cut has no log bunk on it. I will object to anything unless he puts a bunk on there and elevates this log.

(Testimony of William E. Weeks.)

The COURT.—I sustain the objection. I don't see how your drawing is going to help the jury. It is too speculative.

Mr. LIST.—The question was raised yesterday that it was impossible for logs to foul the handholds as is alleged in this particular case.

Q. (Mr. LIST.) I am going to ask you to state whether or not you have ever discovered other Northern Pacific cars with similar defects?

Mr. WINDERS.—The witness has already stated that he did.

A. I have.

Q. (Mr. LIST.) Prior to this time?

A. Since we have been out here.

Q. You started yesterday, when you were interrupted, to tell Mr. Winders about having taken that up with officials of the Northern Pacific with a view to having it corrected. Just tell what officials, if any, you had it up with?

Mr. WINDERS.—Objected to.

The COURT.—I sustain the objection.

Mr. LIST.—Exception.

The COURT.—It is not a matter of notice to the Company. If they used defective cars they are liable whether they had notice or not.

Mr. LIST.—They introduced testimony over my objection [176—141] that it was impossible for any car of this kind to become defective. I am going to prove by this witness that prior to this time he discovered similar cars similarly loaded.

Mr. WINDERS.—I will withdraw my objection,

(Testimony of William E. Weeks.)

if this man wants to swear under oath that he took it up with any official of the Northern Pacific in Seattle. We will do a little impeaching.

Q. (Mr. LIST.) Will you just state if you called this to the attention of any officials—

Mr. WINDERS.—In Seattle.

Q. (Mr. LIST.) Defects similar to the one that you testified to of logs fouling the handholds?

A. That question has been raised time and time again.

Q. You have raised it with some of the Northern Pacific officials? A. Yes.

Mr. WINDERS.—I am going to object unless he states that he took it up with somebody that I can get here.

Mr. LIST.—You have them here in the courtroom.

Q. (Mr. LIST.) Did you have any of these officials with you at any time and show them these cars that were defective?

A. When I made an inspection I always took—

Mr. WINDERS.—We are talking about logs fouling these handholds. I ask for an answer.

The COURT.—Objection sustained.

Q. (Mr. LIST.) I will ask you to state whether or not you have ever called defects of this kind to the attention of Mr. Mulvey, car foreman, or to Mr. Norton, an inspector [177—142] of equipment, of the Northern Pacific?

Mr. WINDERS.—I object to that question as to Mr. Mulvey. He is only a car foreman in the

(Testimony of William E. Weeks.)

Tacoma yard. He knows who the officials are. I object and move to strike his testimony, if it is confined to those people.

The COURT.—What is the purpose of this?

Mr. LIST.—They introduced testimony yesterday for the purpose of leading this jury to believe that a defect of that kind could not occur. I am going to show that it has occurred in the past, that he has taken it up with the car foreman, and with the inspector of equipment of this Northern Pacific Railway, with a view to having the situation rectified, and that they knew that these cars became defective in that respect.

Mr. WINDERS.—I have no objection to his testifying that he told Mr. Norton. I have Mr. Norton here; he is an official of the company.

A. I have taken those things up with the car foreman.

Q. (Mr. LIST.) Mr. Mulvey?

A. That I have made my inspections with time and again,—Mr. Mulvey and Mr. Norton.

Q. Are they here?

Mr. WINDERS.—Yes, they are here now.

A. Yes.

Q. (Mr. LIST.) Have you had that up more than once?

A. Whenever the occasion occurred and I saw them.

Q. That was prior to the time involved in this case? A. Yes. [178—143]

Q. Now, Mr. Weeks, just state to the Court and

(Testimony of William E. Weeks.)

jury what Mr. Mulvey and Mr. Norton said to you when you took that up with them?

Mr. WINDERS.—I don't think that is material.

The COURT.—Objection overruled.

A. I have never raised a defective question with either of the gentlemen that they have not remedied it if they could.

Recross-examination.

(By Mr. WINDERS.)

Q. You are acquainted with Judge Reid, are you?

A. Yes, sir.

Q. He is, as you know, the superior officer for all the Northern Pacific on the west end of the Northern Pacific system? . A. Yes, sir.

Q. You are acquainted with Mr. Blanchard?

A. Yes, sir.

Q. You know he is general manager and the superior man in charge of operation?

A. Yes, sir.

Q. Do I understand that this talk that you claim to have had with Mr. Mulvey and Mr. Norton was a general complaint about our equipment and the place that we put on our grabirons?

A. Not a general complaint, but a recommendation.

Q. As to the way in which we put on our handholds on the log flats, to what official of the Northern Pacific did you make a general complaint as to the manner in which these handholes were attached? [179—144]

(Testimony of William E. Weeks.)

A. I can't say that I made it as a general complaint. I made it as a general suggestion.

Q. Who did you make that to?

A. I have talked that matter over. I don't know whether it was ever raised with Mr. Crosby or not. I have talked it over with those other gentlemen that I spoke of. I have not called on Mr. Reid or Mr. Blanchard in several years.

Q. Is it physically possible,—now, answer me this question,—with the log bunk,—assuming of course, you have got to put these handholes on the end in with bolts, don't you? A. Yes, sir.

Q. So you have got to get your bolt hole down low enough to hold? A. Yes, sir.

Q. You say that with log bunks that elevate the logs at least a minimum of six inches above the car that you have seen those logs down there so they come within two inches of the top of the handholds,—I say you have so testified?

A. Yes, I have testified that the handholds were blocked.

Q. How many times have you ever seen that?

A. I can't tell you.

Q. Give the jury some idea?

A. I have seen it many times.

Q. Have you seen it a hundred times?

A. I would not say how many. I have said many.

Q. How would it get down there?

A. How would it get down there? [180—145]

Q. Yes.

(Testimony of William E. Weeks.)

A. By the log being crooked, or by one end being larger than the other,—by that large end standing out there.

Q. If there was a big end, it don't make any difference whether it was big or whether it was little, it would be laying on top of this log bunk? My pencil there leaves as much clearance (illustrating with pencil).

A. You have that log bunk away up there at the end.

Q. The log is still held up by the bunk, is it not? A. Not the uneven portion of the log.

Q. You say you have seen that condition a hundred times?

A. I don't say a hundred times.

Q. You have seen it fifty times?

A. I said many times.

Q. Have you seen it fifty times?

A. I cannot say.

Q. You say that you showed that to Norton and Mulvey, did you, and they remedied it?

A. I said their attention was called to those defects.

Q. Did you ever call to the attention of or show Mr. Mulvey or Mr. Norton a single car of logs on the Northern Pacific log flats, or a log flat being hauled by the Northern Pacific, where the log was down within two inches of this grabiron?

A. I have called their attention—

Q. I ask you if you have showed them one—if you were with them?

(Testimony of William E. Weeks.)

Mr. HUGHES.—I submit, your Honor, the witness should be allowed to explain.

The COURT.—Answer the question first, and then [181—146] explain afterwards.

A. I have called their attention.

Q. (Mr. WINDERS.) I will withdraw that question then. Did you ever go up or did you ever send them to a car where they could put their eyes on it, in which the log was down within two inches of the grabiron?

A. Yes, I have testified to that.

Q. Where? A. In my general inspections.

Q. At what points? At Tacoma and Auburn?

A. Naturally, if with Mr. Mulvey, it would be in Tacoma.

Q. So that Mr. Mulvey has, with his own eyes, under your sworn testimony here, seen log flats where the logs came down within two inches of this grabiron? A. Yes, sir.

Q. You are just as positive of that as anything else you have testified to?

A. Yes, sir; Mr. Winders, absolutely.

Q. Absolutely? A. Yes, sir.

Q. Have you ever in your twelve years' experience, in testifying for the Government in these cases been other than positive in every proposition that you presented? A. Have I been what?

Q. Have you ever when you have reported a defect in your twelve years of testifying and inspecting for the Government,—has there ever been a case in which you were not absolutely positive?

(Testimony of William E. Weeks.)

A. I have never filed a case except on the truth as I saw it. I have testified to the truth as I saw it. [182—147]

Q. You have testified that you did see this car, and you testified that you saw this engine that you testified to awhile ago pull this train out of the yard?

A. Yes sir.

Q. Where did Norton see one of these cars?

A. I don't know where he saw them.

Q. You say that you did call his attention to them where he could go and see them?

A. Mr. Norton and I talked those things over.

Q. Where did he see a log flat where the log was down so low that there was not a clearance of two inches?

A. Wherever we have inspected cars. In inspecting cars for years with men, I cannot call to mind any specific point.

Q. You were probably with him, were you, when he went down and saw this log too close to this grabiron?

A. Yes, if I called his attention to it, I was.

Q. You were right with him?

A. Yes, sir.

Q. It is your testimony then that Mr. Norton has seen this condition?

A. Yes, sir.

The COURT.—I want to ask you one question about the height of the draw bar. You have testified about it being thirty inches, have you?

(Testimony of William E. Weeks.)

The WITNESS.—No, sir; I don't think he asked me the height.

The COURT.—What I want to ask you is this: If the draw bar is too near the top of the rails, what has to be done to remedy it? [183—148]

The WITNESS.—They can raise the draw bar just propping it up and straightening the iron and shim it on top of that, which generally brings it within the provision.

The COURT.—Generally speaking, what would have to be done?

The WITNESS.—That would be the quickest method. Sometimes there is a great deal of play on the tops of the draw bar. Then, in that instance, they will raise the draw bar and shim on top of that.

The COURT.—Those are all cases where the draw bar in the construction of the cars is the right height?

The WITNESS.—It is a defect that has caused it.

The COURT.—A defect after the construction of the car.

The WITNESS.—Yes, after the construction of the car.

The COURT.—How are you able to see if there is just the same play that the draw bar is too low?

The WITNESS.—By measuring it from the level of the tops of the rails to the center of the core line of the coupler. We don't take it either at the face of the draw bar for the measurement, but we extend back and above the jaw in order to be ab-

(Testimony of William E. Weeks.)

solutely fair. In other words, if you come out to the flat point of the coupler and take the measurements it will either be lower or higher; but if you go back midway of that you will strike a dividing line. [184—149]

The COURT.—Your idea is that if it is too high or too low it doesn't couple satisfactorily?

The WITNESS.—It might be coupled, but on an uneven car, if it struck one with a maximum of 34 inches, if they were up in that position it would slip by.

Q. (Mr. LIST.) You did not have to guess at the center of the coupler?

A. No, sir.

(Witness excused.)

**Testimony of George B. Winter, for Plaintiff
(Recalled).**

GEORGE B. WINTER, recalled, testified as follows:

Direct Examination.

(By Mr. LIST.)

Q. Mr. Winter, do you know Mr. Mulvey, car foreman, and Mr. Norton, inspector of equipment,—both of the Northern Pacific?

A. Very well.

Q. How long have you known them?

A. Twelve or fifteen years.

Q. State whether or not you have ever taken up with either one of those gentlemen, or both of them, the question of flat cars being so constructed that

(Testimony of George B. Winter.)

the lading or the logs will foul with the handholds on the ends of the cars. If so, how often have you done this?

A. It has been done very frequently in making inspections, and finding cars with the grabirons blocked with logs, and other lading. [185-150]

Q. Have you called the attention of these gentlemen to that condition?

A. Yes, sir; I have reported cars defective in their presence, and they have taken the numbers of the cars the same as I did.

Q. What did you do with your reports?

Mr. WINDERS.—I object to that as immaterial.

Mr. LIST.—Now, if your Honor please, they raised the question a while ago that we never notified the high officials of the Northern Pacific. Now, I am going to show that he sent reports to the Interstate Commerce Commission, and copies of these reports are sent to the Northern Pacific Railway.

Mr. WINDERS.—If Mr. Winters wants to testify that he talked to Mr. Reid or Mr. Blanchard—I don't care what he did with the Interstate Commerce Commission.

The COURT.—Objection sustained.

Mr. LIST.—Exception. I offer to prove by this witness that he has made reports of cars found defective with logs fouling the handholds on the end of these flat-cars; that these reports have been sent to the Interstate Commerce Commission, and copies

(Testimony of George B. Winter.)

of them have been sent to the officials of the Northern Pacific prior to the time involved in this case.

The COURT.—You would not expect to show by this witness that the copies were sent to the Northern Pacific. [186—151]

Mr. LIST.—Of course, I would not show that by him.

Mr. WINDERS.—I object to the offer of counsel, because it is not proper.

Q. (Mr. LIST, continuing.) How many times have you had that up with them, Mr. Winter?

A. Quite a number of times in the last few years.

Q. Your attention was called to the fact,—or at least it was suggested that all of these flat-cars had bunks and that those bunks are eight inches in height? A. Yes, sir.

Q. I will ask you whether or not that is correct?

Mr. WINDERS.—I object. That is not Mr. Winter's testimony. Mr. Weeks testified,—that is the only testimony so far,—that these bunks were six or eight inches in height.

The COURT.—A question that involves a reference to former testimony necessarily implies that testimony was given such as was cited. That always leads to a dispute as to whether it was or not, because the other side, if they don't remember just as you do, will think you misquoted it. I sustained the objection.

Q. (Mr. LIST continuing.) I will ask you whether or not you know that all the bunks on these cars are six inches or more in height, or whether

(Testimony of George B. Winter.)

you know them to be less than six inches or as low as four inches.

A. They are as low as four inches. Many of them four and four and one-eighth. They are not all equipped with log bunks.

Q. Have you had occasion recently to find some as low as [187—162] four inches?

A. I have seen some this morning.

Q. Will you give us the number of those cars and tell us where you saw them?

Mr. WINDERS.—I object to that.

The COURT.—Objection sustained.

Q. (Mr. LIST.) Was anyone representing the Northern Pacific with you when you saw these cars?

Mr. WINDERS.—I object to that as incompetent, irrelevant and immaterial.

The COURT.—Objection sustained.

Mr. LIST.—Exception.

Q. (Mr. LIST.) Mr. Winter, I will ask you to state whether or not you had occasion recently to find a car loaded with logs so that if the log shifts it would foul the hand brakes similar to the one that you testified about.

Mr. WINDERS.—I object to that.

The COURT.—I sustain the objection.

Mr. LIST.—I offer to prove—does the Court want the jury out when I make the offer?

Mr. WINDERS.—No, go ahead. I won't object to the jury being present.

Mr. LIST.—I offer to prove by this witness that in Auburn this morning in company with Mr. Pitts,

(Testimony of George B. Winter.)

and Mr. Hazen, the car inspector for the Northern Pacific, they found a car—

Mr. WINDERS.—I object.

The COURT.—I sustain the objection.

Mr. LIST.—Do I understand that there is an objection to my making the offer of proof? [188—153]

The COURT.—When your offer shows that it relates to these recent transactions, I sustain the objection. If you care to complete your offer after the jury goes out at twelve o'clock, you may do so.

Cross-examination.

(By Mr. WINDERS.)

Q. You have talked to Mr. Mulvey and Mr. Norton a great many times about logs extending over the grabiron on the end of the car, have you?

A. Yes, sir.

Q. You have pointed out a great many of them to them? A. Yes, sir.

Q. And you were skirmishing around this morning, were you, out at Auburn?

A. I have been at Auburn this morning and made an inspection, yes, sir.

Q. Of cars in the yard? A. Yes, sir.

Q. Were you and Mr. Weeks together when you made these talks to Mr. Norton and Mr. Mulvey?

A. Not necessarily.

Q. I am asking you if you were?

A. I don't remember.

(Witness excused.) [189—154]

Testimony of M. V. Pitts, for Plaintiff.

M. V. PITTS, produced as a witness on behalf of plaintiff, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. LIST.)

Q. What is your full name?

A. M. V. Pitts.

Q. How are you employed at present?

A. As an inspector of safety appliances, Interstate Commerce Commission.

Q. How long have you held that position?

A. I received my appointment the 13th of December, 1922.

Q. Prior to that time were you in the railroad service? A. Yes, sir.

Q. In what capacity?

A. Employed as a switchman on the O.-W. R. & N.

Q. At what point? A. Spokane.

Q. How long were you in that position?

A. From the 7th day of March, 1912, I think.

Q. And prior to that time what was your experience?

A. I was employed as a conductor on the Great Northern.

Q. Were you with Mr. Winter this morning at Auburn? A. Yes, sir.

Q. In the yards of the Northern Pacific?

A. Yes, sir.

(Testimony of M. V. Pitts.)

Mr. LIST.—I desire the record to show that I want to make the same offer of proof through Mr. Pitts that I will make through Mr. Winter.

The COURT.—Any objection? [190—155]

Mr. WINDERS.—I will object to all that offer except if he is prepared to testify that he saw logs extending down over the end of the car to within two inches of the grabiron. I will withdraw my objection to the offer to prove that as to this witness.

Q. (Mr. LIST.) Did you have anyone there at that time at Auburn representing the Northern Pacific railroad? A. Yes, sir.

Q. What was his name? A. J. S. Hazen.

Q. Do you know what his position was with the Northern Pacific?

A. He is chief inspector at that point.

Q. Did you in company with Mr. Hazen see any cars there that had bunks on? A. Yes, sir.

Q. What was the height of those bunks?

Mr. WINDERS.—I object to that question. Counsel understands what I have no objection to. I am objecting to what he saw out there this morning in the way of bunks.

Mr. LIST.—I understood he withdrew the objection.

Mr. WINDERS.—I said I withdrew the objection if he wanted to swear that he saw logs extending down over the end of the car within two inches of the grabiron.

Mr. LIST.—I will make that offer.

(Testimony of M. V. Pitts.)

The COURT.—Make your offer at twelve o'clock. Is that your case?

Mr. LIST.—Yes, your Honor.

(Witness excused.) [191—156]

(Opening statement on behalf of defendant by Mr. Winders.)

The COURT.—Court will be at recess until 1:30. You, Gentlemen of the jury, are excused until half past one o'clock. I will remain, and counsel, and the stenographer, until plaintiff's counsel completes his offer.

(Jury retires.)

Mr. LIST.—Now, if the Court please, I offer to prove by Mr. Winter, a Government witness, that this morning in company with Mr. Pitts, another inspector of the Interstate Commerce Commission, and Mr. Hazen, chief car inspector of the Northern Pacific at Auburn, they made an inspection of a number of flat cars similar to the ones involved in this case as to which it was testified that the logs on the cars fouled the handhold so that there was no clearance, and that it could not be used; that they found a number of cars where the bunks on the cars were only four inches in height. I offer that because it was suggested yesterday that none of these cars had bunks less than either six or eight inches in height. There was some misunderstanding as to what was testified to.

Mr. WINDERS.—I object to that offer as incompetent, irrelevant and immaterial.

(Testimony of M. V. Pitts.)

The COURT.—I sustain the objection to that offer.

Mr. LIST.—Exception. Second, I also offer to prove by Mr. Winter and also by Mr. Pitts that they [192—157] found a car there similar to the one involved in this case loaded with logs, and the handhold was applied near the top of the endsill, and the car was loaded with logs; that there was just practically three inches clearance between the logs and the handhold, and that if the logs shifted as much as one inch, which it was testified is likely to occur at any time, the logs on that car would have completely fouled the handhold on the end of the car, and it was so admitted by Mr. Hazen, Northern Pacific inspector, in the presence of Mr. Pitts and Mr. Winter.

Mr. WINDERS.—I object to that offer as incompetent, irrelevant and immaterial.

The COURT.—Objection sustained.

Mr. LIST.—Exception.

(Recess to 1:30 o'clock P. M.)

Afternoon Session, 1:30 o'clock.

Continuation of proceedings. All parties present.

Testimony of R. M. Crosby, for Defendant.

R. M. CROSBY, produced as a witness on behalf of defendant, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. WINDERS.)

Q. Your full name is R. M. Crosby? [193—158]

A. Yes, sir.

(Testimony of R. M. Crosby.)

Q. What is your official position with the Northern Pacific, Mr. Crosby?

A. Mechanical superintendent.

Q. Mechanical superintendent of what territory?

A. The Western territory.

Q. As mechanical superintendent what is your duty and authority?

A. I have charge of the rolling stock. The rolling stock and machinery comes under my jurisdiction, which includes cars, locomotives and machine tools, and everything in the mechanical lien.

Q. You have under you master mechanics?

A. Yes, sir.

Q. On each division? A. Yes, sir.

Q. And they have their subordinate officials?

A. Yes, sir.

Q. How long have you been connected with the mechanical department of the Northern Pacific, Mr. Crosby? A. Nineteen years.

Q. What has been your railroad experience?

A. In years?

Q. Yes, sir. A. Forty-one years.

Q. You have worked, have you, as swiper and fireman and engineer?

A. No, I never worked as a fireman or engineer. I was shop man. I learned my trade in a shop. I have ran locomotives. [194—159]

Q. You came up through the shop?

A. Yes, sir.

Q. You started as an apprentice in the shop?

A. Yes, sir.

(Testimony of R. M. Crosby.)

Q. Were you occupying this position on the first of July, 1922? A. Yes, sir.

Q. I wish you would state to the jury briefly and clearly so they can hear you, the conditions confronting the operations of the Northern Pacific so far as its equipment was concerned, so far as inspectors and car repairers were concerned, from the first of July up to the 2d of September, with particular reference to Auburn and Centralia.

Mr. HUGHES.—We object to that question on several grounds. One is that the question is too general, and the other ground is that is it immaterial whether it was convenient for the company to do this work or not. It is no defense and would simply be incompetent, irrelevant and immaterial.

The COURT.—I will overrule the objection.

Mr. HUGHES.—Exception.

Mr. LIST.—It may be understood, your Honor, that as to each witness introduced by the defendant we have an exception as to the testimony relative to the strike.

The COURT.—That is already so understood.

Mr. LIST.—I did not know whether it was understood as to all witnesses. [195—160]

The COURT.—It will be understood if it is not already so understood.

A. On the first of July, as practically everyone knows, and of course railroad men better than anyone else, the railroad employees right down to the wipers went out,—I think in Seattle a few wipers remained. So far as the car repairers and machin-

(Testimony of R. M. Crosby.)

ists and everything of that kind is concerned, they walked off the job. We had instructions not to hire any outside men, and as a result of that it devolved on the officers and men,—the few who remained,—of course the foremen,—car foremen,—in practically all cases remained to work. They did at Auburn and at points where Mr. Winter has mentioned. Besides the foremen, the work was largely done by other officers of the railroad. That condition continued up until July 18, when we started to hire a few men,—the best, of course, that we could secure. But, as you all know, the men that we could hire under those conditions, were not like the men that ordinarily do that work. However, we did get some good men after a while. We struggled along and did the best we could with what we had to do it with. The men worked long hours. The men who were accustomed to office work worked night and day, and some of them worked 22 or 23 or 24 hours a day; couldn't work any more than that. We worked along in that way. Now, I have heard some matters brought out here in connection with the inspection of trains that really seemed inconsistent to me, in that the cars were not inspected in the way that they were ordinarily inspected when we have the regular organized [196—161] force of inspectors. That was true. We did not have the men to do it. The cars were assembled in the train, and they were inspected by these officers that I have mentioned. Sometimes prior to the train moving away,—as has been brought out

(Testimony of R. M. Crosby.)

here,—the hose were either severed,—generally I will say they were stabbed with a knife blade, not cut in two,—just a knife blade inserted,—and in one case we had 22 hose cut before we got out of Auburn. In other instances we had to go around,—the hose were filled with waste,—both the air hose and the steam hose. The refrigerator-cars here in Seattle we had to set them on the steam track and connect them up with steam so as to keep those men from filling them up with waste, and other foreign substances. Taking the whole matter, it was a question of endurance so far as the company was concerned. Everybody was working the constitutional limit. Every nerve was strained. There is no question about that. I don't know of anything that could have been done that was not done with the force available.

Q. You were trying to keep the freight traffic moving in and out of this country, were you, Mr. Crosby? A. Absolutely.

Q. Now, Auburn is a repair point, is it, Mr. Crosby? A. Yes, sir.

Q. On the 31st day of August, the evidence will show, on train leaving Auburn as was testified at 9:50,—as a matter of fact it registered out at ten,—he had on that twenty log cars in defective condition taking them to Renton to be repaired at the Renton car works. Did we [197—162] at that time on the 31st day of August have men available to put them in condition at Auburn?

(Testimony of R. M. Crosby.)

A. I would say no. We did have men, but not sufficient.

Q. It was the honest judgment of yourself and the other officials of the Northern Pacific that it was an absolute necessity to take those cars to Renton for the purpose of being repaired?

A. Yes, sir.

Mr. HUGHES.—Just a moment. We object to that and ask that it be stricken, on the ground that it is calling for a conclusion. If he sets out the facts, the jury of intelligent men can draw their own conclusion.

Mr. WINDERS.—I wanted to kind of cut the matter short.

Q. You sent a lot of cars to Renton, didn't you?

A. Yes, we sent out practically all our log flats to Auburn for,—I mean Renton.

Q. What was the situation at Auburn with reference to having the facilities and men to make those repairs at Auburn?

A. We had the facilities,—of course our stock was not complete,—but in so far as the facilities, if we had the men we could have taken care of a great deal more.

Q. Did you have the men to do it, Mr. Crosby?

A. No, sir.

Q. How many cars were you handling, do you know, through Auburn under load in August and September, approximately? A. Per day?

Q. Yes.

(Testimony of R. M. Crosby.)

A. I should say in the neighborhood of 2500.
[198—163]

Q. Was the force that you had recruited and were recruiting up to the 2d of September,—were they busy all the time, Mr. Crosby, on the equipment that was in the yard? A. Yes, sir.

Q. Now, Mr. Crosby, when was it that the Northern Pacific,—or was there any particular reason why the Northern Pacific did not start to hire any men until about the 18th of August,—18th of July, I should say?

A. Our purpose for not employing men was by reason of our having the hope, or an impression that the men would come to their senses and return to work. Our men who left the service did not do so because of any dissatisfaction that they had with the Northern Pacific. That is, they all gave me to understand that. I am pretty close to the workmen.

Q. Was there any of these men went back East at that time, Mr. Crosby, or not?

A. The chairman of the different crafts. I don't just know how many of them went either to Chicago or Washington for the express purpose of making a separate agreement in so far as the Northern Pacific was concerned, and were refused by Mr. Jewell. I was looking up some letters on that. I did not have time before I left the office. We have it on record.

Q. It was not until after those men returned that you tried to hire outsiders?

(Testimony of R. M. Crosby.)

A. I can't remember the date that they went down; I would not want to testify on that. I don't believe that we did.

Q. You were in and out of Auburn frequently during this [199—164] period, were you, Mr. Crosby?

A. During the early operation of the strike. I was there several days at one time, and nights.

Q. You were working there yourself?

A. Yes, more in connection with the locomotive department, however.

Q. You were familiar with the situation in Seattle? A. Yes, sir.

Q. Was the situation such in Seattle, Mr. Crosby, that you would have permitted any of the officials of the Northern Pacific or any new employees of the Northern Pacific to attempt to make any repairs to cars on this transfer track along Whatcom Avenue having the standpoint of safety of the men and the safety of the equipment and the property in mind?

A. No, I would not expect men to work there. I never send men to do what I would not care to do myself. I would not care to work there myself.

Q. We haul a great many logs, do we not?

A. Yes, sir.

Q. And there are a great many bad order logging cars?

A. Yes, sir, that is the bone of contention.

Q. When you came into this courtroom, Mr. Crosby, had your attention ever been called to the fact that the handhold on the end of a log flat could

(Testimony of R. M. Crosby.)

be fouled so that there was not two inches clearance above the handhold?

A. Not on a log flat, but on lumber it has.

Q. You are familiar, of course, with our car construction? A. Yes, sir. [200—165]

Q. You have gone through the car construction department?

A. Yes, sir, I have. I have heard some evidence this morning that is not entirely correct on the construction of our cars.

Q. You have worked in car shops yourself?

A. I have had charge of the car shops. I never was a car repairer, though.

Q. Are you familiar with our log flat series bearing No. 61753, Mr. Crosby? A. Yes, sir.

Q. Tell the jury about the construction of that log flat, and log flats of that series. There are different series of log flats?

A. That is what is generally known as our standard log flat. I want to qualify what I said about hearing some testimony not entirely correct. It would carry the idea that all of the end sills on our log flats come up flush with the top of the deck. That is not true. Our standard, as our blue-prints show, is that the end sill is flush with the top of the side sill, and the deck comes on top of the end sill as well as the side sill. Now, then, the grabiron referred to, of course, is bolted to the end sill, and in order to get timber to bolt to, you have to get down below the top of the endsill, which would naturally bring the grabiron ordinarily about two inches be-

(Testimony of R. M. Crosby.)

low the top of the deck of the car, provided the car had two-inch decking. Now, ordinarily our cars have two-inch decking, but some of them do not. Some are a little scant two inches. Of course it is little and don't amount to anything. I thought I would mention that. But [201—166] two inches is what we figure on for car decking.

Q. Are you familiar with the log bunks on these cars, Mr. Crosby?

A. Yes, sir, I am putting on about five hundred of them right now,—equipping new cars.

Q. I will show you what purports to be a wheel report of the train containing that flat, which for identification I will ask to have marked Defendant's Exhibit "A."

A. I don't remember the number of the car.

Q. Well, it is marked here with this No. 61753. You don't know that? A. No.

Q. What is the fact, Mr. Crosby, as to bent brake staffs,—does the bending of a brake staff necessarily make it inoperative?

A. No, I would not say that it would.

Q. You have a great many bent brake staffs on log flats?

A. There are very few absolutely straight. We have absolutely very few straight ones. Nearly all of them are bent a little bit. When they straighten them they don't always get them straight.

Q. Are you familiar with the engine No. 1263?

A. Yes, that is a Y-2 engine.

(Testimony of R. M. Crosby.)

Q. Do you know where that engine was in August and September?

A. She has been working between Auburn and Seattle.

Q. Was she down on the Centralia-Tacoma Division? A. No.

Q. Has she been down on the Centralia-Tacoma Division for the last two years?

A. Not to my knowledge. Lou Detherow has been running that [202—167] engine about two years.

Q. Between Seattle and Auburn? A. Yes, sir.

Cross-examination.

(By Mr. LIST.)

Q. After the strike started, how many men were employed at Auburn yards and how many at the Centralia yards as inspectors and repair men?

A. That would be difficult to tell you. There was a great turnover at that time.

Q. Having in mind August 31 and September 2, at Auburn and Centralia respectively, just give your best recollection.

A. You mean including the officers?

Q. No, including the men who made inspections and made repairs to cars.

A. Well, the officers were doing that along with the men.

Q. I just wanted to know how many were doing that work,—whether they were special employees or officers?

(Testimony of R. M. Crosby.)

A. There wasn't very many. I was not down at Centralia. At Auburn it would only be a guess. Probably 15 or 20, something like that.

Q. That is in both the day and the night shift?

A. Yes, sir.

Q. You mean 15 or 20 inspectors or 15 or 20 inspectors and repairers?

A. Well, they were mixed; inspectors and repairers.

Q. Would all the inspectors do repair work?

A. Yes, they had to at that time.

Q. Does that include the inspectors who were out in the yard [203—168] and also those on the "rip" track?

A. We had very few men working on the "rip" track.

Q. Most of these were inspecting the trains that went out?

A. And making repairs on the trains that went out.

Q. The cars that were sent to Renton,—were they all sent from Auburn or also from Centralia,—along about August 31 and the 2d of September?

A. I have no record of any sent from Centralia, but naturally they would be sent because we sent log flats at that time for heavy repairs to Renton.

Q. Where would you draw the line between the cars that you would send to Renton and those that you would repair there?

A. A car that was pretty badly shook or required sills in normal times would go to Renton. Of course

(Testimony of R. M. Crosby.)

at this time a car with less repairs would go there. We would naturally send cars to Renton at that time that we would not send under normal conditions.

Q. Would you also have repaired at Renton the cars with what are known as penalty defects? You understand what I mean,—those defects covered by the Safety Appliance Act? Would you have repaired at Renton cars with defects covered by that Act as well as defects not covered by that Act? For instance, would you send it to Renton for repair if it had a bent grabiron?

A. No, we would not send it to Renton for a bent grabiron.

Q. You would not send any cars there just for a broken sill step, would you? A. No, sir. [204—169]

Q. You would not send any there for a broken lock link or coupler? A. Not ordinarily.

Q. Would you send any there for a ladder tread that was mashed up against the side of the box-car?

A. No.

Q. Would you when you sent cars to Renton that had to have heavy repairs, but also needed these light repairs, which could have been repaired in a minute,—would you make those light repairs to the penalty defects, before sending the car to Renton?

A. We would if we had time, but we had other more important work to do at that time, and it would be questionable whether cars going to Renton

(Testimony of R. M. Crosby.)

would receive the same attention as if going out on the main line for our regular traffic.

Q. There was no line drawn, really, between the character of cars which you repaired in your own yard and those that you sent to Renton, so far as the safety appliance defects are concerned?

A. Only in so far as what I have told you,—If we had a car going there that was shook up, why at that time the chances are that they would not be as particular with the car as they would be with a car that was going out in a commercial train.

Q. You mean in making the repairs to the safety appliances?

A. I am talking about safety appliances, or any other appliances.

Q. In making the repairs, in the yards, by the inspectors and officials that you had there, were they limited to the [205—170] safety appliance defects, or did they repair cars in other respects?

A. Oh, we put in brasses and oil boxes and such stuff as we had. The wheels were usually under loads. In so far as the safety appliances were concerned they would be taken care of by the men who possessed the most knowledge of that particular part.

Q. You endeavored to repair those at Auburn and Centralia?

A. We were repairing all the cars that we could at both places.

Q. What I want to get at, Mr. Crosby, is this: When you came to a safety appliance or a penalty

(Testimony of R. M. Crosby.)

defect, did the inspectors at Auburn or Centralia repair all of those that they could before making the repairs to the car on appliances not covered by the Safety Appliance Act?

A. They paid special attention to the penalty defects. We had all kinds of cars running,—cars that had cracked side sills, flat wheels, and loose pedestals,—all that sort of stuff.

Q. Those were not repaired at Auburn?

A. No, we were not doing any sill work.

Q. Or at Centralia? A. Or at Centralia.

Q. That was all done at Renton?

A. We figured on getting all done there that we could.

Q. Have you heard all the testimony in this case?

A. I think so, yes.

Q. Are you able to say whether or not you have any knowledge of these particular cars?

A. No, I never saw the cars. [206—171]

Q. For instance, referring to count one wherein the handhold on the end of the car was bent against the end sill, are you able to say whether or not that was sent to Renton for repair irrespective of any other defects?

A. No, I am not prepared to say just what that car,—I did not have charge of the record of the cars at that time. As a matter of fact, these cars that were looked over by the officers and the car foremen were got together and sent to Renton.

Q. Any cars that left Auburn or Centralia with

(Testimony of R. M. Crosby.)

knowledge of defects were sent out for the purpose of going to Renton for repair, were they?

A. Out of Auburn?

Q. Out of Auburn or Centralia. Did you have any other place that you sent them to besides Renton? A. Yes, we have South Tacoma.

Q. That you sent them to from Auburn and Centralia?

A. Well, there were some going from Auburn, but principally from Centralia to Tacoma.

Q. When you got your bills from the Renton Iron Works, or the Renton Repair Works—

A. Pacific Car & Foundry Company.

Q. —did they state the details of the repairs so that you would be able to tell what repairs were made to these cars at Renton?

A. Yes, they carried the regular record of work that was done. They had records of the cars that they repaired.

Q. They billed on the Northern Pacific for that work? A. Yes.

Q. You have records in your possession showing whether or [207—172] not they put on a handhold on a certain car or whether they supplied a coupling chain?

A. No, it would not show that. If it had a damaged end sill it would necessarily follow in the application of a new end sill.

Q. So that those bills are itemized bills and you could tell just what was done,—that is true?

A. I think so, yes.

(Testimony of R. M. Crosby.)

Q. Were records kept by yourself or officials at Tacoma of repairs made there at that time?

A. Yes. Now, let me correct that. They have a record of the cars, but we are doing work ourselves there. Without it was a foreign car, the chances are they would not show whether they applied a grabiron. They would have a record of the car coming there and leaving there.

Q. If you had a car going from Auburn to Renton to have a large number of repairs made on it, and you could put a handhold on at Auburn or connect up a coupling lever, wasn't it your practice to do that before the car went out? A. Yes, sir.

Q. In that case the car would not be sent to Renton for the purpose of making those particular light repairs?

A. Any repairs that we would make at that time would be temporary.

Q. In the interest of safety you endeavored to make those repairs?

A. We did everything we could in the interest of safety.

Q. You did endeavor to make such temporary repairs as would put the car in good condition so far as the safety [208—173] appliances were concerned? A. So far as we were able.

Q. You spoke about the construction of the 61,000 series of cars, about the blue-print showing that the end sill does not come up flush with the floor of the cars? A. Yes.

(Testimony of R. M. Crosby.)

Q. Do you want the jury to infer that you don't have any cars on which the end sill comes up flush with the floor?

A. We have some cars of that kind. I qualified my statement.

Q. I did not catch that, Mr. Crosby.

A. The point that I wanted to make there was: Mr. Weeks in giving his testimony,—I would infer from what he says that all of our cars were constructed as he stated. That is not true of all our cars.

Q. I think Mr. Weeks was only testifying as to the cars that he had seen.

A. I did not notice that he referred to the particular car that they found this grabiron on. I was wondering at the time why it was not brought out whether this car had that sort of an end sill on it. The cars, unless they are rebuilt, are repaired in kind. That is, a piece will be removed and used as a template. If they have got a template they put the end sill the same as the one that came off. The same is true of the decking. But in the event of the car being rebuilt, we make a survey and sometimes make changes in the general design of the end sill and other parts of the car. I might add here, though, that the Northern Pacific are pretty conservative [209—174] about making changes in equipment.

Q. You didn't want the jury to infer that you meant to say that Mr. Weeks was not correct when

(Testimony of R. M. Crosby.)

He said that some of your cars had the end sills up flush with the deck?

A. No, if he qualified that by saying some of the cars, that is all right; but I understood that he said all of the cars were that way.

Q. I did not so understand.

A. There are some cars, not only ours, but other people's cars.

Q. Now, you testified that a bent brake staff would not render a brake inoperative? A. Yes, sir.

Q. You mean to say that it could be so bent that the brake would not be inoperative?

A. I mean to say that it could be bent and still be operative.

Q. It could be bent and be totally inoperative, couldn't it?

A. Yes, it could be bent clean down onto the deck.

Q. Haven't you seen a good many bent so as to be totally inoperative?

A. I have seen them, yes. I would not say I have seen such a lot of them. But take brake staffs in logging service, they are frequently bent.

Q. They are frequently so badly bent that they are inoperative?

A. Oh, yes; they are bent so badly as to be inoperative some times.

Q. What did you want the jury to infer when you stated that a bent brake staff did not render a handbrake inoperative? [210—175]

A. I meant just what I said.

(Testimony of R. M. Crosby.)

Q. In what kind of a case? In any of these cases?

A. I don't know anything about these cases.

Q. Well, those are the cases we are talking about, Mr. Crosby.

A. I don't know how bad those brake staffs were bent.

Q. Then your testimony has no reference to any of the cases that are in suit here?

A. I was just talking about brake staffs in general; not tying down to any car or car number.

Q. You did not intend to convey the impression that Mr. Weeks was stating an untruth when he said the brake staff was so bent as to be inoperative?

Mr. WINDERS.—He said that he didn't see any of these cars.

The WITNESS.—I did not see the cars.

The COURT.—Objection sustained.

Mr. LIST.—What is the purpose then of his testimony?

Mr. WINDERS.—The purpose is to show that there are a great many brake staffs bent and don't make the brake inoperative. That is the only purpose of his testimony.

Mr. LIST.—We agree on that proposition.

Q. (Mr. LIST.) Mr. Crosby, I think that is all. Are you going to stay here through this trial?

A. I did not figure on staying any longer than I had to.

Mr. WINDERS.—I will keep him here.

(Testimony of J. J. McCullough.)

Mr. LIST.—No, you don't need to do that. I will excuse you, Mr. Crosby. I thought I might want you later.

(Witness excused.) [211—176]

Testimony of J. J. McCullough, for Defendant.

J. J. McCULLOUGH, produced as a witness on behalf of defendant, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. WINDERS.)

Q. How long have you been in the railroad business, Mr. McCullough?

A. About 35 years; between 35 and 36 years.

Q. At the time of this strike you were superintendent of what is known as the Puget Sound Division of the Northern Pacific?

A. Yes, sir; that included Seattle, Tacoma and Auburn, and the lines in between.

Q. And particularly the Puget Sound Division was created for the purpose of taking care of the switching in Seattle, Auburn and Tacoma?

A. Yes, sir.

Q. And the transportation between those points. How long have you been familiar with the handling and switching of cars, Mr. McCullough? Just tell the jury a little of your experience.

A. Oh, I began as a brakeman away back in 1888 on the Illinois Central, and without going along with the different lines, I put in about six or seven years as conductor and brakeman, possibly

(Testimony of J. J. McCullough.)

two years as brakeman,—and five years as conductor, and about six years as switch foreman,—not continuously, but at different times,—and yardmaster,—general yardmaster and night yardmaster, probably seven or eight years. I don't know just how those will add up. As superintendent eleven years, and trainmaster [212—177] and inspector of terminals, three or four years. It ought to add up 35 or 36 years.

Q. You have been a large part of the last twenty years handling terminals and switching?

A. Since 1894 exclusively.

Q. And during Federal control you were in charge of the switching movements and switching yards of all the railroads?

A. All the railroads in Everett, Seattle, Tacoma, inclusive, in the Puget Sound district here.

Q. Are you familiar with the various cars that are handled? A. Yes, sir; quite well.

Q. The switching of them and making up trains and inspection of trains?

A. If I did not know that, I would not know much of anything?

Q. In other words, you have supervision of all of that work?

A. Yes, and can do it myself if I want to.

Q. You are familiar with the situation that existed on the Puget Sound division particularly at Auburn and Seattle from July 1st to July 31st, 1922? A. Yes, sir.

Q. On July 1st what were you doing?

(Testimony of J. J. McCullough.)

A. On July 1st at 10:00 A. M. I was waiting to see what would happen. At 10:00 o'clock it did happen. Everybody quit,—all the car repairers, inspectors taking care of the equipment at Seattle, Tacoma and Portland. I believe about two old men stayed to work at Tacoma. I believe one at Seattle. Then we made the necessary arrangements, we called in volunteers. We had them [213—178] already consolidated. We got in touch with them and kept our King Street station working, and getting our passenger trains out of town. That is the first thing that we did that afternoon. The next morning I got over into Auburn and Kent. I found the situation over in Auburn,—I went out there July 1st and I found the car foreman, and the bridge inspector the only two men working in the yards inspecting trains. I started in about ten o'clock and helped them. I stayed there that night and the next day I took a little rest. That night I went on and I worked July 4th, day and night; worked continuously from that on up until August 20th.

Q. At Auburn?

A. At Auburn, inspecting and repairing freight-cars, from about five or six P. M. until seven or eight o'clock the next morning.

Q. Then you came in and took charge of your division?

A. Four or five days a week I would come in and handle my office.

Q. You were familiar with the conditions in

(Testimony of J. J. McCullough.)

Seattle and Auburn up to the 31st of August, were you, Mr. McCullough? A. Yes, sir.

Q. When was it that the company first started to employ new men?

A. We were directed to not do it, and I think that ban was lifted on either July 18th or 21st. I am not positive. I believe it was on July 18th.

Q. Just tell the jury now up to August 31st what the conditions incident to and surrounding the operations of the [214—179] Auburn yards were with reference to the inspection of trains and the making of repairs at that point, and in what way it was different from normal?

A. Under normal conditions and prior to July 1st, and at the present time there are four regular car inspectors working eight-hour shifts, and two or three other men doing light repairing and oiling and so forth. Probably somewhere between 20 and 25 men employed at Auburn inspecting cars and making light repairs and taking care of oiling boxes.

Q. When with reference to the cars being put on the train are these repairs made?

A. Normally?

Q. Prior to the strike. And now.

A. Most all the repairs were made on the repair track except small defects which inspectors would find.

Q. You are talking about during the strike period?

(Testimony of J. J. McCullough.)

A. No, now. During the strike there was no men working at all on the repair track, except what little work the repair men could do. We would go through and inspect these trains when they came in,—inspect them particularly for penalty defects,—repair all those that we could, and those that we could not we would tag them or mark them for the repair track. Sometimes there would be some cars with brasses needed. We would not have time to fix them. We would send them to the repair track. Some of the cars with an end knocked out, of course we couldn't do anything with that. Anything that we could fix, like grab handholds or bent brake staffs, or repairing brake shoes and cutting levers we would [215—180] repair them in the yard. When the train came in we would inspect it. One man would go down one side and another the other. We would mark or chalk these cars as we went along. Later we would come back and fix them. If we were called away to get a train out, which was the most important thing, we would leave some of those cars and go after the train. We went over and inspected for the same condition cutting levers, brake staffs, and such matters as we generally knew were made penalty defects.

Q. What was the last thing that was done by these inspectors?

A. After we got that done, when the engine backed down, two of us would go right down to the engine and turn the air on and walk back and inspect the air,—one would go to the caboose and the other go

(Testimony of J. J. McCullough.)

to the engine. We would watch the air gauge and see that they got 70 pounds of air.

Q. Would you and your fellow inspector be along this train when the train would pull out?

A. Always. I would say occasionally we would get a train ready and knew the air was working and the conductor was not ready to go for some reason, and we would know there was some other train waiting we would go to another train. We had lots of work and had to keep our eyes on it.

Q. During this same period up to August 31, what is the fact as to whether or not these train crews were keeping a pretty close eye on the equipment?

A. That was a fact that was well known and not disguised. [216—181] They frequently used to tell me about it and try to run a bluff on me about having a large number of cars leaving in a defective condition. I asked them to give me the car numbers, and told them if they found any cars defective I would be very glad to have them show me. I told that to the chairman of the Brotherhood Committee.

Q. Would they sometimes hold up the trains?

A. Once in a while they would falter around there about something.

Q. Were they particular about refusing to take the train out if there were any defects?

A. Oh, yes. Not all of them. Certain men. We would be particularly careful to see that everything was fixed. They would still be trying to find fault.

(Testimony of J. J. McCullough.)

Q. These questions that I am asking you are general questions. You did not see those particular cars yourself, did you?

A. You mean that the suit was brought on?

Q. Yes, sir.

A. No, sir. I might have seen them at other dates.

Q. Have you with you the wheel reports as made by the conductors on these three trains that are involved as moving from Auburn?

A. Yes, sir.

Q. Tell the jury what a wheel report is.

A. A wheel report is one or more sheets prepared by the conductor that gives the car number and initial and shows whether it is loaded or empty and the class of car,—box, scale, flat, gondola, or refrigerator,—whatever [217—182] it might be,—and station,—figure or number,—that he picked it up at and the station that he left it at, and the contents, where billed and where billed to. A copy is sent to the St. Paul car accountant's office, who keeps the mileage that each car makes and the location of the cars.

Q. Is this wheel report made up at the time the train moves, and does it accompany the train?

A. Yes, sir, the conductor—

Q. One copy of that would be sent into the superintendent's office?

A. Yes, sir.

Q. And one copy would be sent in to St. Paul?

A. Yes, sir.

(Testimony of J. J. McCullough.)

Q. They are both original copies?

A. Yes, sir.

Q. On the 31st day of August, 1922, were these wheel reports,—at least the superintendent's copy, duly sent in?

A. Yes, sir.

Q. And have been in the records of the company at all times since?

A. Yes, sir.

Q. And you have them with you, have you?

A. I personally took them from the records when you asked me to (handing papers to counsel)

Q. I thought you had marked these particular cars on here, did you, Superintendent McCullough?

A. I don't know whether I did. Yes, this car here (indicating). [218—183]

Q. Is this No. 68327?

A. That is it there. That is the only one on that sheet.

Q. That is the one that went out at 10:10?

A. Here (indicating) is the train that went to Tacoma with the coal car,—two or three flats,—two flats. This (indicating) is the one that went to Renton with the Renton bad order and six or seven carloads of logs that was alleged to be bad order.

Mr. WINDERS.—I will offer this in evidence as Defendant's Exhibit "A-2." It covers a train pulled by engine 1784 containing a number of log flats.

The COURT.—It will be admitted.

(Testimony of J. J. McCullough.)

Mr. WINDERS.—As Defendant's Exhibit "A-3" a wheel report covering the train pulled by engine 1263.

The COURT.—It may be admitted.

Mr. WINDERS.—And as Defendant's Exhibit "A-4"—

Q. (Mr. WINDERS.) Is that No. 1263 the same one they were talking about down in Centralia?

A. The same one.

Q. How long have you been familiar with the engine 1263, Mr. McCullough?

A. We have had that engine on the double track, as we call it, running between Auburn and Seattle and Auburn and Tacoma anyhow four years; maybe longer.

Q. Has that engine in the last three or four years ever been down operating between Tacoma and Centralia?

A. I don't think so.

Q. Your wheel report shows that operating between Auburn [219—184] and Seattle on the 31st of August?

A. The train sheet shows.

Q. Have you got with you the original engineer's record of the Company showing where that engine was operated on the 2d of September?

A. I have the engineer's time slip.

Q. When was that time slip turned in?

A. That time slip was turned in at the end of the day's work.

Q. Did you take that from the original records of the company to-day?

(Testimony of J. J. McCullough.)

A. Yes, sir. That is also the time slip of that same engine run by the same engineer on the 2d, 3d and 4th of September. That is the 2d there. I presume that is the only one you want. There is the 2d, 3d and 4th.

Mr. WINDERS.—I offer in evidence these sheets showing that engine 1263 was operating between Seattle and Tacoma on September 2d, 3d, and 4th.

The COURT.—It will be admitted.

Q. (Mr. WINDERS continuing.) Now, referring to Exhibit "A-2," that wheel report shows the various cars that were testified to here by Mr. Weeks and Mr. Winter as leaving at 9:50 from Auburn, doesn't it, Superintendent McCullough?

A. Yes, sir.

Q. Now, referring to car No. 67105?

A. Yes, sir.

Q. That is the eighth cause of action. What was the condition [220—185] of that car when it left Auburn?

Mr. LIST.—If the Court please, I object to that unless the witness has personal knowledge of it. I am perfectly willing to admit these wheel reports for the purpose of showing the movements, but not as to the condition of any car unless there is some one here that inspected it.

The COURT.—Objection overruled.

Mr. LIST.—Exception, please.

The COURT.—This report was kept in the ordinary course of business of the company?

The WITNESS.—Yes, the regular report of each train.

(Testimony of J. J. McCullough.)

Q. (Mr. WINDERS.) What was the condition of that car?

The COURT.—I am admitting the report. Is it kept in abbreviated terms so that the jury would not likely understand it?

Mr. LIST.—I think it is probably in symbol.

The COURT.—I will withdraw my ruling if it is kept in such form as a man would ordinarily understand it.

Q. (Mr. WINDERS.) Why was that car going to Renton?

A. For general repairs, together with twenty-three or twenty-four others just like it.

Q. Did they go in this same train?

A. Yes, sir; altogether.

Q. All bad order cars?

A. All heavy flat cars going to Renton shops to be repaired.

Q. You say that car was with twenty-three or twenty-four others in this same train? [221—186]

A. This report shows a total of twenty-four flat cars all together.

Q. Twenty-four flat cars were moved out as defective cars to Renton for the purpose of being repaired? A. Yes, sir.

Q. As a matter of fact, where did that car become in bad order, Superintendent McCullough?

A. The previous movements of this car No. 67105, was that it arrived in Tacoma on July 29, with a load of logs, and was unloaded and found bad order, and held out of service, and it accumu-

(Testimony of J. J. McCullough.)

lated with other bad order heavy repair cars and moved over to Auburn on the night of the 30th,—August 30th, and then moved the next morning,—the whole bunch of them,—to Renton shops.

Q. The same train with these loaded logs going to Narco? A. Yes, sir.

Q. In that train there was a total of twenty-three cars that were in bad order?

A. Twenty-four.

Q. They were not under load any of them?

A. No.

Q. At that time were you familiar with the situation existing in the Auburn yard so far as repairs were concerned?

A. Yes, sir, that is one of my chief businesses to keep in touch with it; although I had relieved myself as car inspector and car repairer.

Q. You had reinvested yourself in your duties and responsibilities as superintendent? A. Yes, sir.
[222—187]

Q. As superintendent did you have charge of that Auburn yard? A. Yes, sir.

Q. It was your duty to see that the cars moved through that yard? A. Yes, sir.

Q. Were there any facilities in Auburn at that time in connection with the general movement of freight through there, including the facilities and available men to make repairs on these cars in Auburn? A. Could not have been done; no, sir.

Q. Was there any other place that was more

(Testimony of J. J. McCullough.)

available to your knowledge at which these cars could have been repaired than Renton?

A. No, sir; not even South Tacoma.

Q. During this same period in addition to this day you had sent other cars to the Renton Car Works for repair?

A. Yes, sir, crowded them in as tight as we could. They built additional tracks to take them.

Q. What efforts had you used towards getting men at Auburn for the purpose of keeping equipment in repair and keeping commerce passing through there moving?

A. After we were authorized to employ men, almost everything was done to secure them; through advertising, men personally sent to different places,—I think we sent one man to Los Angeles or San Francisco,—I don't know which,—men were shipped in from all parts of the country. We had an office open in the Arcade Building in Seattle. Every newspaper carried one or more advertisements. We would hire any man,—didn't care what [223—188] he was,—to go out and get some of the work done.

Q. You have handled a good many log flats, have you, Supt. McCullough? I mean they have been moved under your supervision and direction,—personal observation?

A. I suppose about as many as any superintendent around this neck of the woods in the last ten years, yes, sir.

Q. Have you ever known of, or has complaint

(Testimony of J. J. McCullough.)

ever come to your knowledge, of the fact that logs on a Northern Pacific log flat had been so loaded as to foul the grabiron at the end of the car?

A. I have never seen such a condition, and no one has ever called it to my attention either.

Q. Had you ever heard it suggested until you went to look over the papers in this suit?

A. No, sir; that is, if I understand this complaint correctly that the log irrespective of the bunk had come down flat and firm on the end of the car and fouled the end grabiron.

Q. That is the complaint.

Mr. LIST.—No, that is not the complaint.

Mr. WINDERS.—The complaint, as I understand it, is that the log came down over the end of this car so that there was not two inches clearance above the grabiron and the log,—came within two inches of the grabiron.

The WITNESS.—Well, it would have to be flat and firm and solid on the deck to do it; and with the log bunks, I don't see how it could do it, unless the log was purposely chipped or hewn or extremely curved, and the log bent right down [224—189] like a man's pipe in two or three feet.

Q. (Mr. WINDERS.) It might be possible, I suppose, with a big knot on the end?

A. Oh, it might be possible, yes.

Q. But you have never heard of such a thing?

A. No, sir.

Q. In your work as a switchman and superintendent and yardmaster,—generally speaking and

(Testimony of J. J. McCullough.)

not applying to these cars,—have you observed bent brake staffs? A. Yes, sir I have operated them.

Q. Will a brake staff be inoperative merely by being bent?

A. No, sir; I have found a good many of them improved by being bent. I could get better use out of them.

Q. Of course, if you bend them far enough you can't use them.

A. No, if you make a fish hook out of them you cannot use them.

Q. You were familiar with the conditions in Seattle? A. Yes, sir.

Q. Do you know where this transfer track is?

A. Yes, sir.

Q. Where is that track with reference to being a public street?

A. The track itself is located within the boundaries of Whatcom Avenue between Hanford Street and Holgate Street.

Q. Franchise tracks?

A. Yes, about the center of what is known as Whatcom Avenue.

Q. Whatcom Avenue is a very wide street?

A. Yes.

Q. Two hundred feet wide? [225—190]

A. Yes, sir.

Q. Those tracks are maintained there by franchise from the City of Seattle?

A. Yes, they can be removed on 30 days' notice from the City Council if they want them pulled out.

(Testimony of J. J. McCullough.)

Q. Supt. McCullough, being familiar with the situation that existed in Seattle on the 31st day of August,—or rather on the 7th day of September,—would you say that it would be reasonable to have attempted to make repairs of any character upon that transfer track located, as it was, in the public street and not on the property of the company, and between the street car track and the paved portion of Whatcom Avenue?

A. It would be very unsafe, unless the men doing the work were heavily guarded.

Q. Would it, in your opinion, knowing the situation and the obligations of the company to the city and the officials of the city and the Government,—would it have been countenanced by anyone exposing the men out there at that time for the making of repairs? A. My impression is it would not.

Q. As a matter of fact, at that time the United States was trying to furnish protection, was it not?

A. Yes, sir, and we refrained from putting even inspectors out there. It was one of the last things that we would have done, because we did not want to put them there. We were afraid. [226—191]

Cross-examination.

(By Mr. LIST.)

Q. I think your testimony has reference solely to Auburn, hasn't it, and Seattle? A. Yes, sir.

Q. You know nothing personally about the situation at Centralia? A. No, sir.

Q. Now, the wheel reports that you have identi-

(Testimony of J. J. McCullough.)

fied,—I wish you would tell the jury how they were made? A. These wheel reports?

Q. Yes, how were they made, and when were they made?

A. The wheel reports were made just before the train departs.

Q. Made by the conductor or somebody else?

A. Well, at the present time?

Q. I am having in mind the one that you have in your hand, Mr. McCullough.

A. Yes, the company has arranged to have men,—yard clerks,—make these out and give them to the conductor for him to take and check over to save delaying the train.

Q. Those particular ones were made by the yard clerks?

A. I would not say whether they were or not.

Q. Well, from what information would the yard clerk make the wheel report?

A. From the same information that the conductor would make it if he was doing it. The yard clerk goes out and gets the car numbers and initials and the necessary information from the cars after the train is made up.

Q. He would start at the head of the train or the rear? [227—192]

A. Either end.

Q. Just go along and take the numbers and initials of the car?

A. When the yard clerk does it there are two,—one on one side and one on the other.

(Testimony of J. J. McCullough.)

Q. So far as the numbers and initials and destination of the cars go, how is that filled out?

A. That is filled out in the office. They bring in these initials, numbers, and classifications of the cars, and then in the office another clerk calls off the number of the cars, and the other consults the waybills from which he gets the information as to the destination and contents.

Q. Does that show the final destination of each car?

A. It shows the final destination if at a local point on the Northern Pacific. If on a foreign road it shows the junction.

Q. You have wheel reports showing the movement of certain trains out of Auburn on August 31?

A. Yes, sir.

Q. Will you just briefly refer to the wheel reports marked Defendant's Exhibit "A-2," for train No. 930 for August 31,—engine No. 1784? How many cars were in that train when it left Auburn?

A. 77 cars.

Q. What kind of a train was that, Mr. McCullough? A. We call that the local.

Q. Local between what points?

A. Between Seattle and Everett.

Q. Is that as far as the conductor would take that car? [228—193] A. Yes, sir.

Q. Does that show there just where every car was set out between those points? A. Yes, sir.

Q. Were all the cars in that train in bad order?

A. No, sir.

(Testimony of J. J. McCullough.)

Q. Did a good many of the cars contain freight,—a good many of them loaded?

A. Yes, here is one page,—27 cars of logs right here in one bunch. There were two cars of logs set out, apparently scratched off.

Q. Taking those that went out in the train, how many of those cars were loaded with freight?

A. 43 of them were loads.

Q. So that is not what you would call a hospital train, is it?

A. 29 being logs. No, sir, a local freight we would call it.

Q. Will you refer to Northern Pacific flat car No. 66150? A. Yes, sir.

Q. Was that a loaded or empty car?

A. A carload of logs going to Narco.

Q. Where is that?

A. Two or three miles the other side of Renton.

Q. So that that car was hauled past Renton and then unloaded and hauled back?

A. I would not say where it was hauled to after this train left it.

Q. Were any of those cars set out at Renton from this train? I will give you the numbers. [229—194]

Mr. WINDERS.—I will admit there was only one. That is the one in the eighth cause of action. The rest were all taken to Narco, which is the dump of the Northwest Lumber Company. It is just beyond Renton.

Q. (Mr. LIST.) Refer now to extra 1263.

(Testimony of J. J. McCullough.)

The COURT.—That is, you admit that those going to Narco were not moved for the purpose of repairs?

Mr. WINDERS.—Yes.

The WITNESS.—What train, did you say, counsel?

Q. (Mr. LIST.) Defendant's Exhibit "A-3," which is Extra 1263? A. I have it; yes, sir.

Q. What kind of a train was that?

A. That was a train of 28 loaded cars. One car of sheep and a good half of the rest of it was logs. Also coal and wheat.

Q. That was not a hospital train, was it?

A. No, sir.

Mr. WINDERS.—It is admitted that none of these trains were hospital trains.

Q. (Mr. LIST.) Take car No. 67219.

A. That car was moved from Auburn to Tacoma.

Q. Is that in the neighborhood of Renton?

A. No, sir.

Q. That went over to Tacoma? A. Yes, sir.

Q. Did it go any further than that?

A. Not with this load. That was the destination of it.

Q. Destination of the logs? [230—195]

A. Yes, sir.

Q. Refer now to the second cause of action,—Northern Pacific flat car No. 61585,—where was that car set out?

A. That was handled the same as the other;

(Testimony of J. J. McCullough.)

moved from Auburn to Tacoma. That was the destination. Unloaded there.

Q. Referring to the tenth cause of action,—Northern Pacific car No. 58618,—in the same train—

A. That car contained Company coal and was moved in this train from Auburn to Tacoma.

Q. That is where it was unloaded?

A. Very likely.

Q. Referring to Extra 1616, August 31, where did that train go?

A. This was a train moved from Auburn to Lester.

Q. Which direction is Lester?

A. Towards Ellensburg. East. Half way up the mountain, about.

Q. Northern Pacific flat car No. 68327, going in that train,—where did that car move?

A. That car moved from Auburn to Eagle Gorge.

Q. Where is Eagle Gorge?

A. That is a short distance east of Auburn.

Q. Is that in the direction of the Renton shops?

A. No, sir.

Mr. WINDERS.—I am not contending that any of these cars went to Renton other than this one car.

Q. (Mr. LIST.) Was it in the direction of any repair shop where you could repair it? [231—196]

A. No, sir; not particularly. If it kept on going it would come to some.

Mr. LIST.—Mr. Winders, you have not referred

(Testimony of J. J. McCullough.)

now to certain other wheel reports. Are you going to put another witness on and identify them?

Mr. WINDERS.—I have got them. It don't make much difference. Here is the other three; might as well introduce them.

Mr. LIST.—I just want one. That is all I care for.

Q. (Mr. LIST.) Mr. McCullough, I am going to hand you a wheel report and ask you if that is one that was made in the regular course of business like the other wheel reports? A. Yes, sir.

Q. And it covers what train?

A. It covers engine 1265.

Q. Engine 1265. I asked you what train,—number of train?

A. There is no train number shown.

Q. Don't you show the train numbers on those wheel reports? A. Yes, here it is. 969.

Q. That is the train number that Mr. Winter and Mr. Weeks have testified to, except they have it No. 1263 and that wheel report shows 1265.

A. This is train 969, engine 1265.

Q. Does that contain car No. 64036?

A. It does.

Mr. LIST.—I now offer this report in evidence.

Mr. WINDERS.—I haven't any objection to that.

The COURT.—It will be admitted.

Mr. WINDERS.—Might as well call it my exhibit. [232—197]

(Admitted in evidence as Defendant's Exhibit "A-6".)

(Testimony of J. J. McCullough.)

Redirect Examination.

(By Mr. WINDERS.)

Q. Mr. McCullough, if there is anything happens to a train from the point of origin to destination,—for instance from Auburn to Narco, or from Auburn to Tacoma, or from Auburn to Lester,—would that be shown on that wheel report?

A. Yes. Anything to any particular car, it is customary for the conductors to show it.

Q. If a conductor discovered anything in bad order or anybody got hurt or anything went wrong with the train, it would be shown on that wheel report?

A. There would be an abbreviated mark or some reference.

Q. Is there anything on those reports?

A. No, sir. Well, I will look and see. I didn't look particularly for that. (Looks.) Yes, sir.

Q. As to what car?

A. On Extra 1616, car 65520, logs, shows bad order.

Q. Is that a car that is involved in this suit?

A. No, sir.

Q. See if you find any more exceptions there on any of them.

A. This 969 leaving Centralia at 10:30 A. M. September 2d shows car No. 64177 as being bad order.

Q. Is that a car in suit in this case?

A. It is not so marked, no, sir. I don't think it is.

Q. Any others on that?

(Testimony of J. J. McCullough.)

A. Nothing more, no, sir.

Q. Is it the duty of a conductor to keep watch of the cars [233—198] in his train while it is in transportation? A. Yes, sir.

Q. Is it his duty to make a memorandum report on this wheel report of anything that is wrong?

A. Yes, sir, it is his duty,—both his duty and his brakeman's duty,—to frequently and at every opportunity inspect his train, even when they stop for water and coal or wait for other trains, to make frequent inspection of the cars in the train at all points, and watch them carefully between stations, for such things as hot boxes and brake beams getting down and dragging, or anything of that kind. He makes these notations on his report. He does that for his own protection and also according to instructions.

Q. Would he make a note of an uncoupling lever that was defective or a bent handhold?

A. If he discovered them; yes, sir.

Q. Is it his business to discover them?

A. It is his business as much as anyone I know of. He has got special instructions and regular instructions in the examination rules. It goes in his examination when he takes the examination.

Recross-examination.

(By Mr. LIST.)

Q. You have referred to about three cars that you say notations were made about some defects?

A. I think it was two.

Q. Are they all on one train?

(Testimony of J. J. McCullough.)

A. There were two trains,—one on each train is all I found. [234—199]

Q. This rule that you have been talking about,—the rule requiring the conductor and brakeman to give the train a thorough inspection,—that rule is winked at, is it not? A. It is not winked at.

Q. Are they required to make repairs?

A. Any repairs that they can make.

Q. What kind of repairs are they required to make?

A. Such as they have tools and materials to make.

Q. Anyway, if they found a car defective,—regardless of the character of the defect,—they would mark on their wheel report bad order?

A. If the conductor found a car with a sill stirrup gone, or a grab handhold missing, he has instructions to place a big placard with black letters,—hang it over that place until the car gets to the terminal.

Q. If they find any such a thing as a handhold bent or a sill step missing, I suppose they make a notation of that in the wheel reports?

A. Yes, and hang this placard on there unless they can remedy it.

Q. If they remedy the defect after they get up the line 50 or 100 miles they make a record of that on the wheel report?

A. I would not say that they always do, but they frequently do it.

Q. Isn't it a fact, Mr. McCullough, that they are

(Testimony of J. J. McCullough.)

very, very careless in making these notations, or they are rather winked at by the company,—the company don't really require that of the conductor?

A. No, it is not a fact, counsel. [235—200]

Q. If you find several defects on a car, would the conductor put a placard over each one of those?

A. No, sir; those placards are just for grabirons and sill steps.

Q. If he found a grabiron bent and a sill step missing, would he put a placard over each one?

A. We would put two if they were in different corners. They are put there as a warning for the men going up against that particular corner.

Q. Suppose you refer to the wheel report for train 930 out of Auburn,—engine 1784,—on the 31st?

A. Yes, sir.

Q. Have you got any notations on there about those 23 cars being defective and placarded?

A. No, sir. Those cars were billed to the Renton shops.

Q. I thought you said they went to some point beyond Renton. Didn't you say that these cars went to some point beyond Renton?

A. The other loaded cars.

Q. I am talking about the ones involved in this case?

A. Oh, yes, I understand.

Q. They went beyond Renton?

A. All except one.

The COURT.—Did you say they had defects?

The WITNESS.—I said this one car did.

(Testimony of J. J. McCullough.)

Q. (Mr. LIST.) Have you got any notation of that?

A. This one car is marked Renton shops,—that and 23 others. The conductor had a car waybill or some information showing that those cars were going to the Renton shops.

Mr. WINDERS.—He has not testified there was any [236—201] other defective cars.

The WITNESS.—No, I thought we were here the last couple of days to show those were not defective.

Q. (Mr. LIST.) And you only had one car in that train in bad order?

Mr. WINDERS.—I said there were 24 bad order cars in there going from Auburn to Renton. You men got the numbers mixed. Of those numbers that you got only one of them was in bad order.

Q. (Mr. WINDERS.) The conductor would know that these 24 were bad order cars?

A. Yes, sir.

Q. From the billing in his hands?

A. Yes, sir.

Q. So far as these other cars they are suing us about, there is no memorandum on that wheel report showing any defects, is there?

A. No, sir.

Q. On the four or five of those cars that they said the hand brakes were bent,—they did set these cars out at Narco?

A. Yes, and unloaded them there.

Q. In unloading them,—from your experience and understanding,—would those men have run

(Testimony of J. J. McCullough.)

onto those four or five hand brakes that could not be turned?

A. They would find them, yes.

Q. In a condition of that kind where a hand brake wouldn't work, would that in the ordinary course be covered by a memorandum by the conductor on the wheel report?

A. The conductor should do it. [237—202]

Q. Would they do it?

A. Yes, sir.

Q. They were not only left at Narco, but unloaded at Narco?

A. The regular crew took them on and they were unloaded.

Q. (Mr. LIST.) These placards are for the purpose of giving notice to the trainmen, are they not, Mr. McCullough?

A. Yes, sir.

Q. Of defective safety appliances?

A. It is part of the safety department's instructions to us.

Q. If the conductor had waybills and knew the cars were defective, how would he protect the trainmen if he didn't put on the placards?

A. He would not put on the placards unless they were penalty defects.

Q. Those are the only ones that he put them on for?

A. Yes, that is for that purpose.

Q. How about an uncoupling chain being broken?

A. They are not used for that.

(Testimony of J. J. McCullough.)

Q. Don't you consider that dangerous going in between moving cars and uncoupling them?

A. Yes, there is considerable danger attached to it.

Q. Will you look at your train sheet and tell us when this car got up to the point where it was unloaded?

A. I am afraid you will have to have Mr. Campbell do that.

(Witness excused.) [238—203]

Testimony of Samuel Campbell, for Defendant.

SAMUEL CAMPBELL, produced as a witness on behalf of defendant, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. WINDERS.)

Q. Just state your name, Mr. Campbell?

A. Samuel Campbell.

Q. What is your business?

A. Train dispatcher.

Q. What does the train dispatcher have to do with keeping a record of equipment and the movement of trains?

A. Well he has to make a record of it on the train sheet, showing the names of the conductors, engineers and engine number, the number of loads, the empties, tonnage, and the time at each station where they have telegraph service.

Q. The train dispatcher, as a matter of fact, is the one that directs the movement of all trains?

(Testimony of Samuel Campbell.)

A. Yes, sir.

Q. You start the record when the train starts and you keep making it until you get through with the train? A. Yes, sir.

Q. (Indicating papers.) Are those the original records that were made on the day these trains moved? Are those the original sheets you and the other dispatchers were working on the day these trains moved? A. Yes, sir.

Q. Are those the records that were made on the 31st of August?

A. We have got sheets here for August 31, yes, sir. [239—204]

Q. All right. Now, let us turn to the sheets covering Extra 1784.

A. August 31. From what point?

Q. From Auburn. Extra engine 1784. Now, just for the information of the jury tell us what time that train left Auburn.

A. At 9:50 A. M.

Q. Where did you get that information?

A. From the operator.

Q. Will you please tell counsel,—I think he wants to know,—where cars Nos. 66150, 61611, 63242, 64764, 68347, and 67399 were billed to? Show what time they arrived at Narco.

A. You want that at Narco? Well, they don't have any telegraph service at Narco. You would probably have to get that off of his car sheet.

Q. Will the wheel report show it?

A. It should.

(Testimony of Samuel Campbell.)

Q. You don't show Narco? A. No, sir.

Q. What time did they get to Renton?

A. They arrived at Renton at 11:20 A. M. We only show the cars set out at Black River or the number of cars in the train at Black River. Then they show what they had at Woodinville. In this case that train went through. This train at Black River had 43 loads and 17 empties. At Woodinville it had 11 loads and 23 empties.

Q. Did it pick up any empties at Black River?

A. That would have to be shown on the car report. [240—205]

Cross-examination.

(By Mr. LIST.)

Q. What was the number of this last train,—Extra 1784? Was the train number 930?

A. 930.

Q. It was a regularly scheduled train?

A. Yes, sir.

Q. (Mr. WINDERS.) Run by engine 1784?

A. Yes, sir.

(Witness excused.)

Testimony of M. G. Crawford, for Defendant.

M. G. CRAWFORD, produced as a witness on behalf of defendant, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. WINDERS.)

Q. Mr. Crawford, what service are you connected with?

(Testimony of M. G. Crawford.)

A. Traveling car service agent of the Northern Pacific.

Q. What work do you do?

A. Mostly of a supervisory nature. Supervising and inspecting with respect to car service and transportation matters.

Q. Over what territory?

A. Spokane and West.

Q. How long have you been in the transportation business?

A. I have been in railroad work 25 years, and practically all of that has been in the transportation or allied departments.

Q. You are familiar with cars,—box-cars?

A. Very familiar with them. [241—206]

Q. Did you change your employment any after the first of July temporarily?

A. Yes, I changed it several times after the first of July.

Q. What were you doing August 31st?

A. I was inspecting cars in the Auburn freight yards on that date.

Q. Who was working with you?

A. Mr. Burnham and Mr. Chittenden.

Q. I am talking about the 31st now?

A. I am not sure that Mr. Chittenden was there on the 31st. There were some changes in the official staff.

Q. You were working anyhow with Mr. Burnham? A. With Mr. Burnham, yes.

Q. Did you work at nights?

(Testimony of M. G. Crawford.)

A. I was working days.

Q. Did you on the morning of the 31st day of August assist in inspecting the train which has been referred to as going out to Narco, pulled by engine 1784, leaving according to the dispatcher's records at 9:50 and according to the wheel report at 10:00; and train leaving there at 10:10, engine 1616; and train leaving there at 10:20, engine 1263? You have looked over these wheel reports have you, Mr. Crawford? A. No, I have not.

Q. You have checked over these cars and the time the trains left? A. Yes, sir.

Q. Were you assisting in inspecting those trains that morning?

A. I was one of the inspectors on duty that morning during [242—207] those hours. I am not able to state which of the trains that I had anything to do with.

Q. Well, do you remember in the morning of inspecting this Local that went down to Renton? Is that part of your duties, or was it part of your duties while you were there?

A. I remember on several mornings that it fell to me to handle that train, yes sir.

Q. Just tell the jury whether or not the inspections up to August 31st was being done by men drafted into the service from the official family?

A. I would not say drafted. My services were voluntary.

Q. I mean they were being performed by men from other departments who had volunteered their services? A. Yes, sir.

(Testimony of M. G. Crawford.)

Q. Do you remember seeing Mr. Weeks and Mr. Winter out there?

A. I saw Mr. Winter and talked to him. I never saw Mr. Weeks at that time.

Q. Did you ever see Mr. Weeks out there with Mr. Winter along any trains that you inspected?

A. No, sir.

Q. On the inspection of those trains,—you and the men with you,—how long prior to the departure of the train would you be with the train?

A. Referring now to this particular No. 930, engine 1784, with 77 cars, some one of us or some two of us would probably be with those cars which would eventually form that train as long as three hours before the departure.

Q. I mean how long would you stay with them with reference [243—208] to the train leaving there?

A. We would stay until the train pulled out, and we would still be inspecting it as it pulled past us.

Q. Would there be anybody with you?

A. Yes, we usually worked at least two of us together; sometimes more.

Q. Now, would you inspect these cars with reference to making repairs on grabirons and brake levers and brake staffs with reference to the train moving out? A. That would be done—

Q. Talk over so the jury can hear you.

A. That would be done in this two or three-four

(Testimony of M. G. Crawford.)

period prior,—immediately prior to the departure of the train.

Q. Would that work be carried on after the cars had been switched into the train?

A. Yes and no, because a good many of those cars were inspected on the incoming train and slight repairs made on the incoming train.

Q. Would there be some of them that you would find repairs to make in after they had been switched into the outgoing train? A. Yes, sir.

Q. What character of repairs did you make at that time when the cars were all made up to go out?

A. I remember particularly straightening out grabirons in order to get the necessary clearance of two inches all around. I remember particularly straightening brake staffs, applying brasses, applying brake shoes, and fixing uncoupling devices so they would operate.

Q. Have you done that both before and after the cars had been switched into the trains? [244—209]

A. Yes, sir.

Q. What was the situation out there around about the first of September? Just tell the jury with reference to the work and with reference to the trains going out, and the conduct of the conductors,—of some of the conductors,—and brakemen in taking out their train. You were there. Tell them.

A. In the first place we were doing a very large volume of business. The Auburn terminal was as

(Testimony of M. G. Crawford.)

busy then as probably it ever was or ever may be again. The attitude of the trainmen was most critical. I mean by that that they departed from their regular path of duty to inspect and examine. I have seen a brakeman crawl under the cars to find a defect, a thing which they don't do ordinarily, and would refuse to do if they were told to do it ordinarily. So that, in addition to our inspection, which was close, we had the assistance in that way of the conductor and his three brakemen. And, as I say, they were most particular to find a defect. It was not always a defect which amounted to anything; but if it was anything they could kick about, they took the occasion to do so, and we either repaired the car without dispute or carded it "bad order" and had it sent out of the train. The inspection force consisted almost entirely of the officers of the company, and there was some interference from outsiders,—a great deal of interference from the people who were apparently our employees,—in connection with the operation of the air brakes on the train and other matters pertaining to the cars. [245—210]

Q. Mr. Crawford, are you familiar with the clearance necessary for grabirons,—handholds,—and for the necessity of hand brakes working on cars? A. Yes, sir.

Q. There was not any record kept of the trains you inspected or of the cars that you repaired?

A. No, sir, I don't know of any such record.

Q. Do you know of any of these cars,—any cars,

(Testimony of M. G. Crawford.)

—going out of there on the 31st day of August on this Narco train, or the train that left twenty minutes later than that, or the train that left ten minutes later than that over to Eagle Gorge, having any defects such as complained of here in this suit?

A. No, sir.

Cross-examination.

(By Mr. LIST.)

Q. Mr. Crawford, how many employees and officials were inspecting cars there on the 31st?

A. I think three on the day shift.

Q. What were the hours of the day shift?

A. Oh, in a general way, from 7:00 A. M. to 7.00 P. M., but we worked over hours.

Q. Three besides yourself?

A. I am only sure of two besides myself at that particular time.

Q. You stated that several times you inspected train No. 930 before it went out. Did you do that on August 31st? A. I am not able to state.

Q. As a matter of fact, Mr. Crawford, you would not be able [246—211] to state whether you inspected 1263 on that day, would you? A. No, sir.

Q. Or Extra 1616? A. No, sir.

Q. You simply went down there and made what inspections you could and repaired what you could, but you made no records of anything.

A. Well, all three of us were moved around from train to train. I could not affirm which particular train of those three that I expected at that time.

(Testimony of M. G. Crawford.)

Q. Were other trains leaving there besides these trains?

A. I have not examined the records. I imagine there were.

Q. As a matter of fact, there were a good many trains out of there in the forenoon?

A. Very busy.

Q. Between eight and eleven o'clock?

A. A very busy part of the day.

Redirect Examination.

(By Mr. WINDERS.)

Q. Were there any trains that went out of the yard that were not gone over by the inspectors and these defects taken care of, to your knowledge?

Mr. HUGHES.—Just a moment. He could only testify as to whether he did anything.

The COURT.—Objection overruled.

A. We three inspectors worked so closely together that there was no possibility of a train getting out without our inspection. [247—212]

Q. (Mr. WINDERS.)—In fact the engineer would not depart without an air test. In other words, there had to be two of you that went over every train that went out? A. Yes, sir.

(Witness excused.)

Testimony of J. L. Burnham, for Defendant.

J. L. BURNHAM, produced as a witness on behalf of defendant, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. WINDERS.)

Q. Just state to the jury your name?

A. J. L. Burnham.

Q. What is your official title with the Northern Pacific? A. Assistant general freight agent.

Q. Of what territory?

A. West of Montana.

Q. West of Paradise?

A. West of Montana. West of the Idaho state line.

Q. How long have you been connected with railroad work, Mr. Burnham?

A. About 18 years.

Q. During 1922 you were located in Seattle?

A. Yes, sir.

Q. With Mr. Coman. Mr. Coman was the Western traffic manager and you were assistant to Mr. Coman? A. Yes, sir.

Q. Did you do any work in the Auburn yards in July and August? A. I did.

Q. When did you go out there, Mr. Burnham?
[248—213]

A. I think it was July 25.

Q. Were you working there on the 31st of August? A. Yes, sir.

(Testimony of J. L. Burnham.)

Q. What were you doing?

A. Car inspector.

Q. Were you working with Mr. Crawford?

A. Mr. Crawford.

Q. You boys were handling the day and night inspection on the 31st? A. Yes, sir.

Q. You have heard the evidence as to these cars that went out on these particular three trains,—one at 9:50, one at 10:10, and one at 10:20 in the morning? A. Yes, sir.

Q. Tell the jury in reference to the departure of the train what you would do in reference to the inspection and repair of cars?

A. Well, when the train was made up, two of us would get together and start from one end. One would carry a bar and one would carry a monkey-wrench. We would start down and make a general inspection of the train from one end to the other and couple up the hose and make any minor repairs that were necessary. If we found any defects which it was not possible to repair, then we would "bad order" the car and ask to have the car taken out of the train.

Q. Did you find that after the cars were switched into the train, Mr. Burnham, any cars that had the brake levers loose or the lading shifted against the brake staff, or the brake staff bent or the grabirons bent? [249—214]

A. After the cars were switched in?

Q. Yes. A. Occasionally.

Q. Would you make the repairs?

(Testimony of J. L. Burnham.)

A. If we could, yes, if it was possible to do so.

Q. If not would you let the car go forward?

A. No, sir.

Q. Were there any trains went out of there on the morning of the 31st of August that either you and Mr. Allmain, or you and Mr. Crawford did not inspect? A. No, no, not that morning.

Q. How late with reference to the departure of the train did you stay with the train?

A. We would stay until the engineer had given us a signal it was O. K.; that is after the air test had been made.

Q. Would you inspectors have to couple up the air hose between the cars? A. Yes, sir.

Q. Then after you had gone over your train you would have to give the air a final test, would you?

A. Yes, sir.

Q. Would you be on the ground along this train as it was pulled out of the yard, Mr. Burnham?

A. Not always. It all depended on whether there were other trains ready to go out. As soon as we got the O. K. from the engineer, we let the train go; but we always kept an eye on it.

Q. What was the attitude along about the 31st of August of the train crews with reference to taking out trains? Was it critical or otherwise?
[250—215]

A. They were very critical. As a matter of fact, the train crews generally did as much inspecting as we did. The intention was to delay the movement of trains as much as possible. That was

(Testimony of J. L. Burnham.)

the impression we gained,—the only impression that we could gain after what we saw they were doing.

Q. At that time were your trains being held up by these crews claiming something was wrong?

A. Yes, sir.

Q. Was that a common occurrence?

A. That was a common occurrence on train 930.

Q. That is this train that went out to Narco?

A. Yes, sir.

Q. Just tell the jury about what conditions were around there at that time, Mr. Burnham?

A. The other brotherhoods seemed to do everything that they could to help the cause of the striking shopmen. That is, they tried to make it appear that the inspection which was being made by the men that were there was not effective, and they even went so far as to cut the hose after we had,—I will have to explain that first before I get into that. The first thing we did, we asked the engineer to apply the air. Then we went along the train and made an inspection of the hose to see if there was any leaky hose or anything else that might appear. Then we asked the engineer to release the air. We would find in some cases that after the air had been applied angle cocks had been turned, or sometimes if we happened to be in the center of the train,—a train of 75 cars,—some way or other the angle cocks at the rear of [251—216] the train were opened up so the brakes were not

(Testimony of J. L. Burnham.)

effective. As a matter of fact, they hindered us in every way possible.

Q. From your inspection and the examination of those trains on the 31st day of August, was there any of those cars that when they finally left Auburn yard to go out on the road that were missing grab-irons or had brake staffs so bent that they could not operate, or on which uncoupling levers were in bad shape?

A. No, sir.

Q. You volunteered your services out there, Mr. Burnham?

A. Yes, sir.

Q. You know up to that time from your experience that anything of that kind might happen, a train might be stopped any place by these train crews until something was done?

A. Oh, yes.

Q. Did you ever see Mr. Weeks and Mr. Winter out in the Auburn yards? Did you see them on this day?

A. I did see one man crossing the tracks, and I made inquiry as to who he was. They said it was a Government inspector. I don't know whether it was Mr. Weeks or Mr. Winter.

Q. Did you ever see them together?

A. No, sir.

Q. You were inspecting cars at that time, were you, Mr. Burnham?

A. Yes, sir.

Q. When you saw this man did you see him get

(Testimony of J. L. Burnham.)

up on any of the cars or make any measurements or anything of that kind? [252—217]

A. No.

Cross-examination.

(By Mr. LIST.)

Q. That was your first experience inspecting cars, was it?

A. Yes, sir.

Q. You were asked if you inspected all trains before they left Auburn the morning of the 31st?

A. I did not understand Mr. Winders in that way. He asked if myself and Mr. Crawford or myself and Mr. Allmain inspected them.

Q. Your reply was that you did on that day?

A. Yes, sir.

Q. What did you mean when you said on that day and emphasized it?

A. I had no particular reference to make. I don't know why I did say that day particularly.

Q. Do you mean that every day you were out there you inspected every train that went out?

A. No, I won't say that. It would be impossible. There are some trains leaving there close together, and we had four to six men. It would be impossible for one man to inspect all the trains.

Q. So that you and Mr. Crawford and the other gentlemen did not inspect every train. As a matter of fact, you don't know whether you inspected the three trains involved in this case on the 31st or not?

A. I know I inspected 930.

Q. Every morning?

(Testimony of J. L. Burnham.)

A. I did for three weeks.

Q. With Mr. Crawford? [253—218]

A. Not with Mr. Crawford.

Q. Who did you make that inspection with?

A. Either Mr. Allmain or a man named ———.

Q. That is the train in which all these defective cars were being hauled to Renton, I believe you said?

A. Yes, sir.

(Witness excused.)

Testimony of B. H. Allmain, for Defendant.

B. H. ALLMAIN, produced as a witness on behalf of defendant, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. WINDERS.)

Q. Mr. Allmain, what is your employment with the Northern Pacific?

A. Roadmaster.

Q. How long have you been connected with the Northern Pacific?

A. 23 years.

Q. How long have you been roadmaster?

A. 10 years.

Q. You live at Auburn?

A. Yes, sir.

Q. The roadmaster has charge of the upkeep of the road?

A. Yes, sir.

Q. And has section men under him?

(Testimony of B. H. Allmain.)

A. Yes, sir.

Q. And foremen and so on. Did you do any work during this strike period at Auburn? Were you working there on the [254—219] 31st day of August?

A. Yes, sir.

Q. Were you working with Mr. Crawford and Mr. Burnham?

A. Yes, sir.

Q. Inspecting cars that morning?

A. Yes, sir.

Q. Did you in connection with these other gentlemen on this morning inspect these trains that have been referred to?

A. Yes, sir; I did.

Q. Henry, just tell this jury what you did at that time when you would make your various repairs and when you would finally leave the train, if you found any defects?

A. We inspected the trains as they came in, and as they were switched out. We made minor repairs, what we could, and also when the train was,—when the cars were switched into the train and were going out we inspected the train. I was on one side and one of the other men on the other side. One of us had a pinch bar and one of us a large monkey-wrench, and if we found any defect, such as bent handholds or grabiron or brake staffs, we would straighten them before the train started out.

Q. If there was anything that you could not do, what would you do with the car?

(Testimony of B. H. Allmain.)

A. We had the car switched out and set for the "rip" track.

Q. Were the train crews that were taking out these trains on the 31st of August and prior thereto keeping a pretty close check on the cars that were on their trains?

A. What is it?

Q. I say were the train crews,—the conductor and brakemen,— [255—220] were they checking up on you pretty close?

A. Yes, sir, they were. They were checking us very close. They even held the trains and would not move until some defects had been corrected.

Q. On any of those trains that went out would you have to couple the air hose or help couple the air hose between each car?

A. Yes, sir.

Q. On any of those trains that went out,—when they finally departed from the yard,—was there any condition such as testified here,—with brake staffs so bent that they would not work, or hand-holds on the side of these flats bent in flat against the car, or the lading on the car over on top of the brakes so that they would not work,—were any cars permitted to go out in the trains in that condition?

A. No, sir; positively not.

Q. Was there any interference with your work out there at that time during the strike period?

A. What is that?

Q. I say was there considerable interference with the work?

(Testimony of B. H. Allmain.)

A. There was considerable.

Q. After you had your trains made up and tested—

A. After we had them tested, we would find our hose cut and something done. We, of course, didn't know who did it. We had considerable interference.

Q. Now, Henry, you have taken care of and are very familiar with the track layout?

A. I don't take care of the Auburn track. My district is north. [256—221]

Q. Are you familiar with the location of the tracks?

A. Yes.

Q. Can you tell this jury the approximate distance between the leads over which the cars coming,—we will say,—towards Renton,—which would be towards Seattle,—and the distance from the lead over which that train would finally get out of the yard; and the distance from the lead to the lead over which trains finally going out to Tacoma would go over?

A. Well, the yard is approximately two miles long, and the trains going north to Renton,—that is toward Seattle?

Q. That is toward Seattle.

A. There are sometimes 70 or 80 cars, or 90 cars on that siding, and there is still room and would be room for another train the other way. That is, with a few cars.

Q. What is the length of the ordinary log flat?

(Testimony of B. H. Allmain.)

A. Approximately 45 or 50 feet; different lengths.

Q. 40 to 50 feet?

A. 40 to 50 feet. 30 or 40 or 50.

Q. This train 930 with 70 cars would extend for some 2800 feet?

A. Yes, approximately.

Q. Now, do you know whether the cars coming to Seattle came out of the north end of the yard?

A. Yes, sir.

Q. Just a block or so below the depot at Auburn proper? Now, the trains going to Tacoma,—I don't know whether you know or not,—do you know where they go out of the yard,—this yard that is two miles long,—how far is the point where the engine goes off those switch tracks onto [257—222] the main line from the point where the engine goes off the switch tracks onto the main line in the north end,—do you know?

A. Well, the train going to Tacoma at times,—the Tacoma trains leave sometimes on track 5 and 6.

Cross-examination.

(By Mr. LIST.)

Q. Mr. Allmain, you made these inspections with Mr. Burnham and Mr. Crawford?

A. Yes, sir.

Q. You testified that on August 31st no cars went out in the condition we have been talking about?

A. I did.

Q. Had you found a defect such as a missing brake wheel, would you have repaired it,—a brake wheel to a hand brake?

(Testimony of B. H. Allmain.)

A. We would if we could.

Q. Well, if the brake wheel was off, what would have prevented you from putting on a new brake wheel?

A. If the brake wheel—

Q. Yes, could you put on a new brake wheel?

A. We would. We could put on a new brake wheel if there was nothing else the matter with it.

Q. Nothing else the matter with the car or with the brake staff?

A. With the brake staff.

Q. Can you tell us why you did not put on a new brake wheel on Northern Pacific car 67105? It is admitted that it went out that morning on train 930 without a [258—223] brake wheel?

A. I don't believe there was one.

Redirect Examination.

(By Mr. WINDERS.)

Q. There was about twenty "bad order" cars went to Renton that morning?

A. Yes, sir.

Q. You did not try to repair those?

A. No; that was the train where they were going to the Renton shop.

Q. You would not try to repair cars that were going to the shop?

A. No.

Recross-examination.

(By Mr. LIST.)

Q. You would not put a brake wheel on a brake staff even to make a temporary repair?

(Testimony of B. H. Allmain.)

A. What?

Q. You would not put a brake wheel on to simply make a temporary repair where the car was going to the shop, would you?

A. We would if there was any penalty defects so we could do it.

Q. Then I asked you why you did not do it in this particular case. Your answer was that you did not think it went out in that condition,—is that correct?

A. Well, I did not think it was. Of course, there were so many cars went to Renton for repairs at that time that had [259—224] to be repaired to go through heavy repairs, that we did not attempt to do that.

Q. You did not attempt to make the slight temporary repairs in view of the fact that it had to have heavy repairs later on,—is that it?

A. Yes, we made all the repairs that we could and that we thought was necessary,—penalty defects.

Q. That is what I was asking you about. I think you misunderstood me. Why didn't you put a brake wheel on this car when it went out on 930 that morning?

A. You mean a brake staff?

Q. No, only a brake wheel.

A. The staff?

Q. No, the wheel,—hand brake wheel.

A. That is hand brake staff.

Q. You have a hand brake staff and on top of that you have a little wheel?

(Testimony of B. H. Allmain.)

A. Yes.

Q. The staff was there, so far as the evidence shows, but the wheel was off?

A. Yes.

Q. Why didn't you put that on there before it went out in train 930 on the 31st of August?

A. I did not see it.

Q. You don't think it went out in that condition?

A. It may. I can't believe it. I didn't see it.

Redirect Examination.

(By Mr. WINDERS.)

Q. Would you have tried to put on a brake wheel on a car [260—225] that was marked for the Renton car shops for repair?

A. We would not attempt to make repairs to such a thing on cars that went to the car shops.

Recross-examination.

(By Mr. LIST.)

Q. Mr. Crosby then was mistaken when he testified that he always tried to make temporary repairs to cars before they left?

Mr. WINDERS.—I haven't any record that he so testified.

The COURT.—I sustain the objection. When you compare the testimony of one witness with a former witness you always produce a situation which leads to confusion.

(Witness excused.) [261—226]

Testimony of J. F. Alsip, for Defendant.

J. F. ALSIP, produced as a witness on behalf of defendant, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. WINDERS.)

Q. What is your position with the Northern Pacific? A. Train-master.

Q. What are a train-master's duties, so the jury may know?

A. He has general supervision of the operation of trains on the district, including the station help and anything that pertains to the duties of a superintendent, in fact.

Q. How long have you been in the railroad service?

A. The total service is about 24 years this fall.

Q. 24 years this fall? A. Yes, sir.

Q. You were located with Mr. Nixon at Centralia? A. Yes, sir.

Q. Was he sent to Centralia at your request, Mr. Alsip? A. Yes, sir.

Q. Were you in charge there during this strike? were you in charge of this inspection work at Centralia? A. Yes, sir.

Q. Was Mr. Nixon there with you on the morning of the 2d of September when these locals went out that have been referred to? A. Yes, sir.

Q. Something was said by Mr. Nixon about penalty defects. Mr. Alsip, can you give this jury some idea of the number of penalty defects that an inspector can find on a box-car.

(Testimony of J. F. Alsip.)

A. I can't give you the exact number. I have talked to [262—227] different Federal inspectors, and men of our mechanical department. They claim there is somewhere around 200 or 240 defects that are claimed by the Government inspector to be penalty defects.

Q. On each car?

A. On a box-car. There are a few less on a low car such as a "Gon" or flat.

Q. There would be a few less? A. Yes, sir.

Q. That includes all the grabirons?

A. Yes, sir.

Q. What are some of the penalty defects?

A. Grabirons, stirrups and ladders.

The COURT.—Of course, the number is something that the jury can take into account in determining the opportunity of observation and the chances of detection by the different witnesses that have testified; but to go to work and enumerate them, I am afraid it would take too much time.

Q. (Mr. WINDERS, continuing.) Just tell the jury when you went to Centralia.

A. I was in Centralia on the morning of July 1st waiting and anticipating that the strike would be called,—that is, that it would become effective at 10:00 A. M. Every man in Centralia with the car foremen left in the yard, and I was left there alone. In the afternoon a man by the name of Campbell, who is our bridge and building supervisor, came at my request. The following day I appealed to the superintendent of the O. W. R. & N., who was very

(Testimony of J. F. Alsip.)

much interested in the operation of [263—228] Centralia Yard, to send a little help if possible, and he sent Mr. Nixon.

Q. The O. W. R. & N. and the Great Northern both operate over the same tracks?

A. A joint operation.

Q. And use the Centralia yards?

A. Yes, sir. In this situation we proceeded to try to run the railroad. I fired a boiler awhile and went down and got out some trains. I worked 52 hours without having my clothes off.

Q. On the 31st day of August you and Mr. Nixon were inspecting trains during the night until those cars went out that morning? A. Yes, sir.

Q. What were the conditions on that date,—that is the surrounding conditions, as to—well, as to your safety at night, and what was being done to your equipment after you had it examined and attempted to repair it?

A. I think probably we had as much interference at Centralia as any other one place in the Northwest territory. First of all, Centralia is a notorious place, as you know. We were continually interfered with in making up our trains and inspecting our trains and connecting the air. Even after we had passed one of our trains and given the engineer the signal to set the air and release the air we have found and been notified in some cases of malicious acts on the part of unknown persons which resulted in defects such as we are talking about now,—cutting levers, disconnected, air hose cut or

(Testimony of J. F. Alsip.)

[264—229] pulled apart, and in some instances the stirrups were bent off by the use of bars, same as we would use in straightening, and opening the angle cock to prevent our getting a full air pressure. And numerous other things such as Mr. Crosby spoke of, waste being placed in the hose,—and the gaskets taken out,—and numerous other things.

Q. Did you during this strike period see Mr. Weeks or Mr. Winter? A. Quite often.

Q. Did you see them together down there?

A. I saw Mr. Weeks and Mr. Winter quite often in Centralia Yard early in the morning, usually in this fashion; one man on one track and the other on the other taking the numbers and going over the cars and making their inspection and in the performance of their duties.

Q. Did they ever call any defects to your attention?

A. Yes, I remember one case in particular. Mr. Winter told me when I went up,—he was across the car,—that I had failed to straighten a grabiron; and I immediately went back and did that. I am quite sure that when I went up this day that he was on this particular case that I straightened it. However, as I said before, such interference as I have enumerated did happen and there was no way to prevent it. After inspecting and repairing defects and getting away twenty or thirty car lengths, there was nothing to interfere with an employee,—if so disposed,—bad ordering the car, causing the defect to again appear.

(Testimony of J. F. Alsip.)

Q. Did you at any time have Mr. Nixon make any repairs,— [265—230] light or otherwise, as the cars came into the yard?

A. No, we were not sufficiently manned to take care of any inspection on the in-coming train.

Q. Did you make any inspection or repairs prior to the cars being switched into the out-going train?

A. No, it was necessary for us, owing to the conditions and the lack of help, to wait until the trains were made up, and in most cases the road engine was on before we could reach the train and make our final inspection and couple up our air and make the air test.

Q. Did you, after these cars had been switched in and after your engine was hitched on, go along the train at that period and straighten bent grab-irons and fix coupling levers?

A. Yes, sir, we carried as the other gentlemen have stated, a bar and wrench; and we straightened grabirons and stirrups, and we carried some wire with us to make the connection of a lot of disconnected cutting levers, and things of that sort.

Q. Tell us how far toward Tacoma,—which is the direction these trains went except one,—is the other end of the yard,—that is, how far is it from the other end of the yard toward Tacoma from the point a quarter of a mile from the depot that has been referred to in the evidence in this case?

A. The lead switch on which the train going to Tacoma enters the main track is about a mile and

(Testimony of J. F. Alsip.)

a quarter from this location referred to as a quarter of a mile east of the passenger station.

Q. That is all yard tracks in there? [266—231]

A. Yes, sir.

Q. Did you make up your trains and make your repairs on any particular track?

A. Anywhere we found them.

Q. Anywhere you could get the train made up,—any track?

A. Yes, sir. With the exception that we had to have regular tracks that we tried to make certain trains on for this reason, a large train must have a long track and a short train can be accommodated on a short track. That would govern in some cases.

Q. There is quite a log movement into the Grays Harbor and Willapa Harbor country, is there not?

A. Very heavy.

Q. You have been familiar with that a good many years? A. Yes, sir.

Q. Is it your business to keep familiar with anything that would speed the operation of trains?

A. It is my business to keep in absolute touch with the situation at all times.

Q. How many years have you been familiar with that territory?

A. Since 1914. I have been familiar with the territory since 1909, but I have been on the road since 1914.

Q. Have you known, or has your attention been called to the fact, in hauling logs upon log flats into Willapa Harbor or into Tacoma, that the hand hold

(Testimony of J. F. Alsip.)

on the end of the car, such as is used by the Northern Pacific, was fouled so as not to have two inches clearance between the handhold and the logs over the top? [267—232]

A. No, I have not. I have known of cases where the side handhold had been fouled by the limb of a tree, but not the case that you refer to. If a log had a knot or some unusual growth beyond the bunk, it might rest on the deck of the car which is above the handhold, and the handhold is so placed as it has the required clearance as you speak of.

Q. Mr. Alsip, referring to Defendant's Exhibit "A-6" and "A-1" for identification, and one which I will call "A-7" for identification, are those the wheel reports covering the three trains upon which the complaint has been made as having moved out of Centralia? A. They are.

Q. They have been taken from the records of the company? A. Files of the office in Tacoma.

Q. Do you remember which one of these trains,—I guess you can pick it out,—has that car that they claim was fouled, Mr. Alsip?

A. No, I don't remember the car numbers, Mr. Winders.

(Mr. WINDERS hands paper to witness.)

Mr. LIST.—It is the 13th cause of action, car No. 61753.

The WITNESS.—Yes, it shows on this report.

Q. (Mr. WINDERS.) Is there any indication on that report that would indicate the character of log bunk that was on that car, Mr. Alsip?

(Testimony of J. F. Alsip.)

A. Yes, sir, it has a notation that the car was equipped with a common bunk.

Q. Tell the jury what a common bunk is and its dimensions.

A. A common bunk is a piece of timber varying in height [268—233] from six to eight inches and almost square, the width of the car, placed almost directly over the truck center and between,—that is between the truck centers on which the logs are loaded.

Q. How far is this bunk on this car in question from the end of the car, approximately?

A. Approximately, five feet.

Q. One on each end and then one in the middle?

A. Usually two in the middle; sometimes more.

Q. As a train man, you are directly responsible for the conduct of the men out on the road, are you not, Mr. Alsip? A. Yes, sir.

Q. Something has been said about these wheel reports. You have looked over these wheel reports in these three trains? A. In a general sense.

Q. What is the fact as to the rules and regulations and as to the duty of conductors in making those wheel reports, in making a memorandum of any bad order cars?

A. They are required to do so.

Q. Would that cover penalty defects such as are referred to in this case? A. All defects.

Q. You are out on the roads a great deal?

A. Continuously approximately.

Q. You are out on the roads for the very pur-

(Testimony of J. F. Alsip.)

pose of seeing that these trains move and the rules and regulations of the company are lived up to?

A. Absolutely.

Q. Do you know on the Tacoma Division or any other division [269—234] of this railroad where the company is winking at that regulation and not requiring the train men to make those entries?

A. I can only testify to my own division. We are not winking at it. We are requiring them to make them.

Q. Do you go out on the ground for the purpose of seeing that they do live up to this regulation, Mr. Alsip? A. All regulations.

Q. I don't know whether I asked you or not, but how were you being treated along this time when things got very critical about the 2d of September by the train crews when taking out their trains? Were they particular about the condition of their equipment when it went out of Centralia?

A. They were giving the trains as good an inspection as we could possibly give them, and they had instructions from their various officers,—their organizations,—to take records and report any cars that were not in shape and also to refuse to take them. In many cases they would delay the trains. I have seen trains in Centralia delayed as high as one hour waiting for some of us to come and make some minor repair or to have a car set out, and in some instances I have had to use this particular crew that was objecting to the condition of the car to make a set-out of the car, because the

(Testimony of J. F. Alsip.)

switch engines were not available. The situation,—the condition was very critical, especially at Centralia. That is borne out by not only the records but the news items during that time that we were not able to get help at Centralia, largely for the reason that Centralia [270—235] had a notorious reputation as an I. W. W. center. While a great many other points were supplied with help, we could not get men to go to Centralia. When we did, we only dared put them to work in the day time. That left Mr. Nixon and myself to work in the nights continuously. In fact, I was not released at Centralia until October 12th. I was continually in service from July 1st to October 12th. Only by the aid of my automobile we were able to keep up with the game. So far as the interferences were concerned,—

The COURT.—You have answered the question.

Q. Is there any evidence or any record as made by the conductors of these three trains at the time these cars moved from Centralia, of any of these cars that the Government is complaining about being in bad order any time from the time they left Centralia until they got to the point of destination?

A. There is not on these two reports. The gentleman has the other. There is a notation of a bad order car, but not the number referred to.

(Looking at paper.)

No, sir.

(Recess to 9:00 A. M. Thursday, June 21, 1923.)

(Testimony of J. F. Alsip.)

Q. (Mr. WINDERS, resuming.) Mr. Alsip, under the conditions that existed at Centralia at the time referred to, was there any facilities or were there any men under which anyone on this train where this log was alleged to have gone over the end,—under which that car could have been unloaded there in the Centralia yard? [271—236]

A. Not unless we would have made some special arrangement to dump them.

Q. You have already outlined to the jury the force you had? A. Yes, sir.

Q. Within a terminal of that kind under the schedule of the brakeman, could you require them to unload that car in the Centralia terminal?

A. Absolutely no.

Q. But out on the line at some point that was not a terminal to which this car was billed, and under their schedule and working arrangements, it was their duty to unload the logs?

A. Not exactly. It would be their duty to place it at a point where it could be unloaded.

Cross-examination.

(By Mr. LIST.)

Q. Mr. Alsip, we were talking about Centralia. Now, on September 2d, I wish you would tell us how many men you had there at that time making inspections and repairs.

A. Mr. Nixon and myself at night.

Q. Between what hours were they?

A. We did not have any stated hours. We went to work as a rule at six o'clock in the evening and

(Testimony of J. F. Alsip.)

worked through until the following morning, until the local trains had departed. Ordinarily it was our purpose to get them out by eight or eight-thirty. Oftentimes they ran until ten or eleven and as late as noon under the [272—237] circumstances.

Q. How many did you have on the day shift?

A. There were on the day shift at that time Mr. Dean and several new recruits. I could not just say how many. Three or four, I think.

Q. Now, taking the period before the strike, if a car had been loaded with logs and fouled the handhold at the end of the car, what would they have done at Centralia?

A. I am not clear as to how this log fouled the grabirons myself.

Q. If the end projected and came down and the handhold was fouled, what would they have done at Centralia before the strike?

A. I can't see how that could have happened.

Q. Well, I am asking you how it would have been handled at Centralia before the strike if it had happened.

Mr. WINDERS.—I object to that. If he never knew of such a case, how could he tell how it would have been handled?

The COURT.—Objection overruled.

A. If I undertand your question correctly, if this log was a bottom log, as it would have to be in this instance, it is presumed that it would have to be unloaded.

(Testimony of J. F. Alsip.)

Q. (Mr. LIST.) You never heard of them taking an axe and chopping out a clear space so the men could reach the handhold? A. No, sir.

Q. You never heard of that being done at any place? A. No, sir. [273—238]

Q. Did you ever see any bunks less than six inches? A. Possibly.

Q. You have seen a good many of these cars where the handholds were clear up as high as the floor of the car?

A. No, I never saw them that high.

Q. Would you say that you ever had one on your line? A. I cannot say as to that.

Q. You don't know anything about that, do you?

A. I am speaking about what knowledge I have; what I have seen.

Q. It has not been your duty to go around and inspect these cars and see whether they conform to a general standard?

Mr. WINDERS.—I object to the question.

The COURT.—Objection overruled.

Q. (Mr. LIST.) Has it ever been your duty prior to the strike, or is it your duty now, to go around and inspect these cars and see whether or not the handholds have been properly applied so as to be below the deck of the car?

A. Not except in cases where some special attention has been brought to a consideration of some particular car.

Q. It has not been any part of your duty to go

(Testimony of J. F. Alsip.)

around on the repair tracks and see whether those cars are properly repaired, has it?

A. It is my duty, and was then and prior to that, to have supervision over the repair track.

Q. I am not talking about having supervision over the repair track. I am talking about going around and actually observing and inspecting.
[274—239]

A. Yes, sir.

Q. If you saw a car with the top of the handhold near the decking of the floor, what would you do?

A. If I saw it?

Q. That is, if the top of the end handhold came up close to the top of the deck of the car and did not extend below there at least two inches, what would you do?

Mr. WINDERS.—I object on the ground that there is no statutory requirement, or any other requirement, that requires them to be two inches below the deck of the car.

Mr. LIST.—You forget that the testimony of your own witnesses is that lumber on these cars has repeatedly fouled the handholds.

Mr. WINDERS.—I have not heard any testimony like that.

The COURT.—Objection overruled.

A. If I should find anything in connection with the appliances on a car that was not right, I would immediately take some steps to have it remedied.

Q. (Mr. LIST.) That is not responsive to the question.

(Testimony of J. F. Alsip.)

(Question read.)

Mr. WINDERS.—So I may preserve the record, I renew my objection as it being incompetent, irrelevant and immaterial and not proper cross-examination.

The COURT.—Objection overruled.

Mr. WINDERS.—Exception.

The COURT.—Exception allowed.

A. Now, your question,—I don't fully understand,—if [275—240] you mean that if I found a handhold that was too close to the top of the car, what would I do?

Q. (Mr. LIST.) Yes, too close to the top of the car, so that if any logs or lumber on there projected over it would give less than two inches of clearance. What would you do?

A. If the car was loaded at that time?

Q. If the car was empty at that time, and you saw it was used with that kind of service and you saw that if it was loaded the handhold would be fouled,—what would you do?

Mr. WINDERS.—I object to that question, because there is not any evidence, and can't be any evidence, introduced in this case on the loading of lumber.

The COURT.—Objection overruled.

A. If the lading had fouled the handhold, as you speak of, we would shift the lading. If the handhold was improperly applied we would have it changed.

Q. (Mr. LIST.) Would you say that if the

(Testimony of J. F. Alsip.)

handhold was applied nearer than two inches to the top of the deck, it would be improperly applied?

A. Nearer than that?

Q. Less than two inches, Yes, sir.

A. According to the specifications, it is supposed to be two and two and a half inches.

Q. This should be changed before the car was put in service for lumber or logs?

A. If it was improperly applied, it should be changed while on the repair tracks. [276—241]

Q. Have you had occasion recently to make any changes in any such cars? A. No, sir.

Q. Have you inspected them? A. Yes, sir.

Q. Have you inspected any right down below here in the last 24 or 48 hours?

Mr. WINDERS.—His duties are on the Tacoma Division.

The COURT.—Objection overruled.

Mr. LIST.—I understood him to say that he made some inspections recently.

The WITNESS.—Not in Seattle. I am talking about Centralia.

Q. (Mr. LIST, continuing.) But if any cars came out of Seattle, going to Centralia, you would do the same work that you referred to?

A. If I saw them on the rip track or repair track.

Q. You don't think it is common practice to have those handholds improperly applied?

A. I know it is not.

(Witness excused.)

**Testimony of J. J. McCullough, for Defendant
(Recalled).**

J. J. McCULLOUGH, recalled as a witness on behalf of defendant, testified as follows:

Direct Examination.

(By Mr. WINDERS.)

Q. I just want to ask you a couple of questions. For the information of this jury, what is the distance in [277—242] Auburn yards from the track that the trains go out towards Seattle—it would be in this direction like this Narco Local leaving from the switch on the main track,—what is the distance from that point down to the lead where the engines take these trains out to go to Tacoma?

A. It is a fraction over two miles.

Q. A fraction over two miles?

A. Perhaps two miles and one-tenth or maybe two-tenths, not quite a quarter over two miles.

Q. What is the length of a log flat?

A. 41 feet is the length of a common Northern Pacific log flat.

Q. What is the length of an engine and tender on a train?

A. It depends on the different engines; this engine 1784 is probably 70 or 75 feet,—tender and engine.

Q. Say that each car is 41 feet and the tender and engine is 71 feet,—is there some distance between the cars? A. Yes, sir.

Q. How much, approximately?

(Testimony of J. J. McCullough.)

A. Less than three feet. Over two. Two and a fraction.

Q. In ordinary parlance, what number of cars of this character is considered as making a mile?

A. It is fair to presume 100 cars.

Q. A hundred cars would ordinarily represent a mile and 50 cars a half mile? A. Yes, sir.

Q. Look at this wheel report and tell this jury how many cars there were in this train going to Renton,—do you remember? [278—243]

A. 74 or 77.

Q. So that train would be approximately three-quarters of a mile long?

A. Yes it would be not much longer than that and nearly that long.

Q. Now, I did not want to make any statement to the jury that I do not prove. I don't want them to remember anything that I don't prove. The wheel report on this train gives the time that the trains leave. Where is that time given in, Superintendent McCullough? What does that represent?

A. The leaving time shown on the wheel report?

Q. Yes.

A. That should be put on by the conductor to correspond with his time slip and other reports.

Q. Where does he hand in that information? I mean where does he make that memorandum? Before he leaves the yard?

A. He shows that on his register. The official time that the train leaves the station.

Q. The time this conductor would leave Auburn,

(Testimony of J. J. McCullough.)

—would he have to go to a yard office, Superintendent McCullough? A. Yes, and register.

Q. I notice that the dispatcher had 9:50 and the conductor says 10:00.

A. That might be in this way. The train was called to leave at 10:00 and might have left five minutes earlier.

Q. Presumably the dispatcher's sheet would be the one that was correct? A. Yes. [279—244]

Q. So far as operation is concerned you would assume that the train left at 9:50, which the dispatcher has as the leaving time?

A. Absolutely. It is not necessary to have an actually correct record of time on the wheel report, although it is desirable.

Q. You had some of the official staff checking in Seattle and Auburn. You did not play any favorites as between Seattle and Auburn on inspection of cars, did you, Superintendent McCullough?

A. No, sir, the same attention was given to all out-bound trains,—trains going out.

Q. And the same in Tacoma? A. Yes, sir.

Cross-examination.

(By Mr. LIST.)

Q. Which one of the trains was it that went to Renton and which one to Ellensburg or up in that direction and which one to Tacoma?

A. I have forgotten the engine numbers. They are marked on the slips.

Q. No, I just want you to tell us where it was.

(Testimony of J. J. McCullough.)

A. Extra 1263, Conductor Lawrence, the report shows it leaving Auburn at 10:20 going to Tacoma.

Q. That is the only one that went to Tacoma?

A. The only one that we are interested in here.

Q. No. 1616 is the one that went east up towards Ellensburg? A. Yes, sir.

Q. And the one which went at 9:50 went to Renton? A. Yes, sir, No. 1784. [280—245]

Q. Have you a blue-print of the Auburn yard so you can show the jury where these trains left?

A. Not here.

Q. Are you able with the blackboard to sketch it off so the jury will understand and show where these trains left on this particular morning?

A. Yes, I believe I can from the information I have heard here. Not that I saw them, you understand, but from information I have heard. I think I can draw a pretty fair picture of it on a blackboard.

(Witness draws diagram on blackboard.)

(Witness excused.)

**Testimony of R. M. Crosby, for Defendant
(Recalled).**

R. M. Crosby, recalled as a witness on behalf of defendant, testified as follows:

Direct Examination.

(By Mr. WINDERS.)

Q. Mr. Crosby, you have testified that you have charge of equipment and that you are familiar with this car No. 67105,—log flat. A. Yes, sir.

(Testimony of R. M. Crosby.)

Q. Was that car when originally put into service equipped in accordance with Government standards? A. Yes, sir.

Cross-examination.

(By Mr. LIST.)

Q. Mr. Crosby, when you say equipped according to the standards [281—246] of the Government you mean that there was an end handhold on the face of the end sill on the end, do you?

A. Yes, sir, and all other standard equipment.

Q. That end sill is how wide?

A. The end sill?

Q. Yes.

A. Ordinarily six inches wide.

Q. You don't mean to say that that hand hold was down at the bottom of the end sill instead of being at the top of it almost flush with the deck of the car?

A. No, there are very few flat cars that you can apply grabirons in that location.

Q. In fact you have some of those flat cars where the grabiron has been applied up near the top?

A. Yes, there is an obstruction that makes it necessary to apply it nearer the top than the bottom.

Q. There isn't any uniform standard as to the exact spot on that end sill where you put that handhold?

A. We have a standard location, yes, sir.

Q. Is that always followed?

A. That is supposed to be followed.

(Testimony of R. M. Crosby.)

Q. Is it always followed?

A. Well, I would not,—so far as I know it is.

Q. You, of course, do not look after those things personally?

A. Well, I don't see every grab iron that is put on our cars.

Q. Now, if there was about a four to six-inch bunk, and the hand hold was applied almost flush with the deck, do you mean to say that under those circumstances that [282—247] a log would foul the handhold?

A. It would be very unusual.

Q. I want to ask you if you mean to say it would be impossible.

A. A log might have an elbow on pointing down.

Q. That would make it possible?

A. Yes, sir.

Redirect Examination.

(By Mr. WINDERS.)

Q. If it did have an elbow on and dropped down,—we will assume for the purpose of the argument that it dropped down in the handling of the logging car,—in your experience with logging cars might not that log shift back again in the next ten feet?

A. Yes, sir.

Q. In other words, if it did not have that kind of an elbow they are talking about, and the log had been down something like this so that it would

(Testimony of R. M. Crosby.)

come down too low, when that train or car is moved, it is just as probable that it would shift back again?

A. Yes, sir.

Q. So, if he went along and saw one of those things down there,—assuming that Mr. Weeks saw one down there,—if that train had been moved before the inspectors got along, it is just as probable that that log had shifted back into its proper position?

A. That is true.

Q. You had official records of Centralia, did you?

A. Yes, sir. [283—248]

Q. You knew what was going on?

A. Yes, sir.

Q. You knew the men that you were able to get?

A. I know we were having a great deal of difficulty to get any men to go to Centralia at that time by reason of the I. W. W. and other elements that seemed to infest that particular locality.

Q. What is the fact as to whether or not, if one of these boys, found, or if the conductor actually saw,—or his brakemen,—this elbow sticking down here on this car,—was there any available force or available means to unload that car at Centralia at that time?

A. Not at that time.

(Witness excused.)

Mr. WINDERS.—That is the defendant's case, your Honor. [284—249]

**Testimony of William E. Weeks, for Plaintiff
(Recalled in Rebuttal).**

WILLIAM E. WEEKS, produced as a witness on behalf of plaintiff, testified as follows in rebuttal:

Direct Examination.

(By Mr. LIST.)

Q. Mr. Weeks, will you just refer to that blackboard there briefly and clear up a little question as to where you were when those trains moved out?

Mr. WINDERS.—If your Honor please, he has already stated the tracks and numbers. This is not redirect examination. We went into that fully on direct examination and cross-examination.

(Argument.)

The COURT.—I can't tell as yet whether it is or not. Objection overruled.

Q. (Mr. LIST.) Go ahead, Mr. Weeks.

Mr. WINDERS.—I insist that questions be asked.

Mr. LIST.—I ask that Mr. Weeks explain his position when those trains moved out.

Mr. WINDERS.—He has already testified on that proposition.

The COURT.—I don't understand that he testified how he got from one train to another.

Mr. WINDERS.—Then it is not rebuttal.

The COURT.—Objection overruled.

A. This outbound track described here (indicating)—

Mr. WINDERS.—I submit that this witness should answer the question and not make a lecture.

(Testimony of William E. Weeks.)

Q. (Mr. LIST.) Just point out there about where you stood when the first train went out. Take the first train that went out at 9:50,—Train No. 930.

The COURT.—On redirect examination you have a right [285—250] to ask leading questions in order to narrow the issue and avoid getting into something that is not rebuttal testimony.

A. I don't remember at all of telling that I stood at any definite point.

Mr. WINDERS.—I move to strike the answer as not responsive.

The COURT.—It will be stricken.

Q. (Mr. LIST.) Just state now,—if you don't recall that you did,—just about where you did stand with respect to some fixed object there.

Mr. WINDERS.—Do you have to use your book?

The WITNESS.—I testify from my book.

Mr. WINDERS.—I say, you have to use your book?

The WITNESS.—Yes, sir, I make a record of this testimony. In stating the location, it is opposite or near the yard office. The yard office would be there (indicating), directly across here (indicating), there being nothing fixed, I have not any fixed object to locate myself.

Mr. WINDERS.—I move to strike the last part of the answer.

The COURT.—Motion denied. Just what is it that you propose to show by this witness that he did not testify to before?

(Testimony of William E. Weeks.)

Mr. LIST.—Simply that he could get out and see this train when it went out at 9:50,—that he could get from one train to the other and see these cars that he has testified about. [286—251]

The COURT.—Why don't he tell it?

Mr. LIST.—He is going to, but Mr. Winders interrupted and objected.

The WITNESS.—There is a viaduct that goes off up here some place (illustrating). The defects were nearer—

Mr. WINDERS.—I move to strike that answer.

Mr. LIST.—It is not a question of standing there to see the whole train going out. Mr. Weeks testified that he only stood there to see these defects in the train. Therefore when the last defect gets by him it is not necessary to stand there for the whole train to go by.

Mr. WINDERS.—I am not objecting to him stating where he stood.

The COURT.—He will have to make it intelligible. He will have to state where he stood in relation to the train. I will overrule the objection. He is telling about the viaduct in relation to the train. Objection overruled.

The WITNESS.—I was here at the yard office on Track 6 for the southbound. I was near the yard office on Track 6 for the southbound. One train was going one way and one the other. The northbound train was going out this way (indicating) and the southbound train would be leaving from Track 6 out that way (indicating).

(Testimony of William E. Weeks.)

Q. (Mr. LIST.) Were you in a position so you could get from one train to the other so you could see these cars that have been talked about as they passed by? [287—252]

Mr. WINDERS.—I object to that.

A. Yes, sir.

Mr. WINDERS.—I object to that question, because he has already testified that he did.

The COURT.—Objection sustained.

Q. (Mr. LIST.) Mr. Weeks, some question has been brought into this case by some of the witnesses,—particularly Mr. Alsip. He said these cars were not equipped with hand holds on the end of the flat cars so that they could come up to less than two inches from the top of the floor. I am going to ask you to state if you recently made any inspections of any flat cars for the purpose of seeing whether they were equipped with hand holds that come up to less than two inches from the top of the floor.

Mr. WINDERS.—I object to that as not rebuttal.

The COURT.—Objection sustained.

Mr. LIST.—Exception.

Q. (Mr. LIST.) I want to make it a little more definite. I am going to ask the witness one more question. Mr. Weeks, state whether or not yesterday morning you inspected a number of flat cars in the yards of the Northern Pacific for the purpose of ascertaining whether or not the hand holds on the ends were applied at the top so that they could be fouled by lumber or logs.

Mr. WINDERS.—I object to that on the ground that it is not redirect and can't be material. I am not caring in this case whether this grab iron was up this high or was not. [288—253]

The COURT.—Objection sustained.

Mr. LIST.—Exception.

(Witness excused.)

Mr. LIST.—That is all, your Honor.

(Argument to the jury.)

Whereupon the Court instructed the jury as follows: [289—254]

Instructions by the Court.

GENTLEMEN.—You have had the case explained to you. You will take out with you to the jury-room the pleadings in the case, consisting of the complaint of the plaintiff and the answer of the defendant and the reply of plaintiff to the answer. As you have been advised by counsel, the Court instructs you to return a verdict of not guilty on the eighteenth count, and I have written in the formal verdict that will be submitted to you the word “not” in the blank left in the verdict as to the eighteenth count. All of these counts charge the defendant with violations of the Safety Appliance Law. One provision of that law is to the effect that all cars shall be equipped with secure sill steps and an efficient hand brake. Now, one of the counts—the fourteenth count—alleges that the sill step on a certain car was broken. The provision of the statute is that it should be secure,—

that the cars should be provided with secure sill steps. Well, if a sill step was broken so that it was not secure, and it was used in violation of the provisions of the act, why, that would be, if it was shown by the evidence,—a preponderance of the evidence,—it would be your duty to return a verdict of guilty on that count.

The issues have been narrowed in the case somewhat. The complaint alleges that the defendant operates an interstate railway; that on certain dates it hauled certain cars out of Auburn and Centralia, on which cars there were certain defects. Now, the defendant by its answer admits that it is an interstate railroad; it admits that it hauled from Auburn these cars and hauled [290—255] from Centralia these cars mentioned. But it denies that it hauled these cars with defects of which complaint is made. That narrows somewhat the issues in the case.

The main issue you will find under each count is whether the car was moved over the line of the railroad,—moved out of the yard over the line of railroad,—with a defect existing of which complaint is made, with the subsidiary question of whether such a movement was necessary to get the car,—if it had a defect,—to get it to the nearest available repair point, and that whether it could not have been repaired at the point where it was,—that is, at Auburn or Centralia. Before you can find a verdict of guilty on any count of the complaint the plaintiff must have shown by a fair preponderance of the evidence those material allegations in the complaint,—that count of the com-

plaint,—which are put in issue by the answer of the defendant. Unless there is a fair preponderance of the evidence in plaintiff's favor on those disputed material allegations why, it would be your duty to return a verdict of not guilty.

Now, coming back again to this section,—I have nothing further to instruct you regarding the sill steps,—that same section provides that the car should be equipped with an efficient hand brake. Now, that word “efficient,”—it is difficult to find anything to define it further. It is doubtful whether it requires definition,—the word “efficient.” There has been something said to you in argument about an operating brake. Well, a brake that can be operated with difficulty is not an efficient hand brake, I instruct you, within the meaning of this [291—256] law. Probably as near a definition as you can get in the ordinary language of the street regarding an efficient hand brake would be one that was in first-class operating condition.

Under this section of the law there has been testimony regarding certain brake staffs,—hand brake staffs,—that were bent. Well, if the staff of the brake was bent and it impaired the operating condition of the brake, the brake would not be efficient; but if there was some such slight bend in the staff that did not interfere with the efficiency of the brake it would not be in violation of this law merely because the staff was bent slightly.

There are certain other counts in the complaint that are drawn regarding the automatic couplers. There is a section of this law that requires that the

car shall be equipped with automatic couplers coupling upon impact so as not to require a man to go between the cars in order to effect the coupling. Under certain counts they claim the levers were missing by which the car could be uncoupled. You understand the cars are required to couple upon impact; that is, when one car is bumped up against the other that they couple. As the Court understands the evidence, they have to be uncoupled with a lever worked from the side of the car in such fashion that the men handling the cars can use these levers without going between the ends of the cars. Of course, if these brake levers were missing so that they did have to go between the ends of the cars, that would be a violation of the Act. One count [292—257] avers that the uncoupling lever was disconnected from the lock block and another that the lock link of the coupler was broken. Well, if those defects existed and they were such that the defects necessitated the men going between the ends of the cars to uncouple them, that would be a violation of the Safety Appliance Act under those counts.

There is another section that provides,—or rather forbids,—the use of cars that are not provided with secure grabirons or handholds on the ends and sides of each car for greater security for coupling and uncoupling the cars. Now, under that provision there is a count that the handhold was bent against the car, not leaving the minimum clearance of two inches.

Count seven avers that the handhold was missing, and count eleven that the handhold was bent in not leaving two inches clearance. Count thirteen alleges that the handhold was fouled by the lading on the car. Count nine alleges that the handholds were missing from the sides of the car. Well, in those counts where it is averred that the handholds were missing, if they were missing, that would be a violation of the Act, if the car was run out of the yard on to the line, unless it was to the nearest available repair point. The Interstate Commerce Commission, supplementary to this Act, has provided for a minimum clearance of two inches on these handholds. And that is a definition,—one feature at least,—that it is necessary to make the handholds secure, and was within [293—258] the province of the Interstate Commerce Commission; and a violation of that regulation by the use of a car having handholds on it with less clearance than that would constitute a violation of the Act.

The tenth count relates to a ladder in which it is claimed that the tread was bent in, leaving a minimum clearance of less than two inches.

I have advised you that the burden of establishing by fair preponderance of the evidence that the particular defect of which complaint was made in the particular part of the complaint that you are considering rested upon the plaintiff before it could recover, and that the car was run out of the yard on to the main line with that defect. So far as the question concerning all those counts of the complaint where the defendant contends that the

car was moved for the purpose of repairing the defects at the nearest available repair point, if you find the defect to have existed and that the car was moved out of the yard on to the main line, the burden of showing by a fair preponderance of the evidence that the removal was necessary in order to have the car repaired, that it could not be repaired in the yard and it was being removed to the nearest available repair point,—the burden of establishing those matters by a fair preponderance of the evidence rests upon the defendant.

There has been considerable said in the evidence and in the argument regarding the effect of the strike. You are authorized to take what the evidence has shown regarding this strike into account in determining [294—259] whether the movement was necessary for the repair of the cars and whether Auburn and Centralia were available repair points for the purpose of making the repairs in the matters that are claimed to have been defective. You can readily comprehend that in establishing a railroad every station does not have to be a repair point for all purposes or for the purpose of repairing all kinds of defects. If the railroad had established at division stations and other points facilities for making repairs, and the strike came along and rendered some of them unavailable, they would cease to be available repair points by reason of the strike; that is, it would not only be necessary to have tracks and shops and machinery and tools to effect repairs, but it would be necessary to have men to operate those shops, tools,

equipment, and machinery; and if the strike assumed such proportions that they could not get men at those particular points to work because of the friction growing out of the strike, it might be concluded, if the evidence was sufficient, that they had ceased to be available repair points, and it would not be a violation of this law to move a car to a repair point and remedy the defects where that condition did not exist, or was not so acute, or where the friction was not so great. There may be other things that you might consider the strike as bearing upon. A strike, as you all know, and all of us know, as a matter of common knowledge, tends to array men on the two sides of the question. They have their sympathizers, and when their sympathy is aroused [295—260] it can affect their judgment and can affect their powers of observation. A bent brake staff that would not be a serious matter sometimes, if men get excited and are sympathizing with one side or the other, it might be magnified and might be minimized. It works both ways. That fact may enable you to harmonize to some extent the dispute in the evidence without finding it necessary to determine that one side or the other tried to deceive you.

I have been requested to give certain instructions in writing,—and will read some of them to you. (Reads.)

This is a civil, and not a criminal cause of action. The Government is only required to prove its case by a fair preponderance of the evidence.

By a fair preponderance of evidence is not

meant the greater number of witnesses, but means that character of evidence which to the jury seems the most convincing, the most satisfying.

If the jury believes, upon a fair preponderance of the evidence, that any car was hauled by the defendant from Auburn, or Centralia, in the condition alleged in the Government's complaint, its verdict should be for the Government on any such cause of action, unless moved for the purpose of being repaired, as I have explained to you.

The Government inspectors are not required to notify the railroad company of defects found in its equipment. The work of maintaining its equipment in good, safe condition devolves upon the railroad, and if [296—261] any car was hauled in a defective condition, as alleged, it is no defense for the carrier to say that the Government had failed to notify it of such defects.

In order to promote the safety of employees and travelers, the law imposes upon a carrier the absolute duty of keeping its equipment in repair; and this duty cannot be ignored or evaded by the defendant by saying that it exercised a high degree of care.

It is no defense for the defendant to say that because of a strike of some of its employees it was unable to secure competent men to inspect and repair the cars involved in this case. Yet you may consider what the evidence has shown in that respect in determining the nearest available repair point.

The provisions of the Safety Appliance Act are of such nature that they cannot be ignored, or set aside, by a carrier on the grounds of inconvenience to the carrier of keeping its equipment in repair.

The uncoupling apparatus on each car must be operated on its own mechanism, and it is no defense to say that even if a car has a defective coupler it can be uncoupled from the adjoining car by means of the uncoupling lever on such adjoining car.

The hand brake on a car must be operated whenever a car is in use regardless of the fact that there might not be any occasion or necessity to use that particular hand brake before a car had reached a certain destination. Therefore, it is no defense to say that on any car in question there was no necessity to use a defective hand brake until a time after the logs on the [297—262] car had been unloaded, or until the car had reached some point after leaving Auburn or Centralia. Of course, as I have instructed you already, if it was moved for the purpose of repairing the defects and the defects could not be repaired at Centralia or Auburn, you have a right still to consider that matter.

In order to comply with the spirit of the law, the defendant cannot establish a division terminal and make up trains at such terminal, and haul in such trains, cars with defective safety appliance, such as those involved in this case. Therefore, it is no defense to say that the defendant, owing to a shortage of inspectors and repairmen at Auburn, or Centralia, hauled any of the cars from these points, in

road service, in the condition complained of by the Government. Notice the words "in road service." They would have a right, if they could not be repaired there and it was necessary to move them in order to secure the repairs, to haul them to the nearest available repair point, because that would not be in road service.

As to each of the cars hauled from Auburn or Centralia, if found to be defective as alleged, the jury must return a verdict for the Government unless the defendant has shown: That such car had been properly equipped with the appliance described by the Act of Congress and the orders of the Interstate Commerce Commission; that the defective equipment became defective while being used by the defendant on its line of railroad; that the defendant, through its officers or agents had discovered the defects; that [298—263] the defendant was hauling the car to the nearest available point from Auburn or Centralia where the car could be repaired for the purpose of putting it in repair, and that such repairs could not be made at Auburn or Centralia.

The fact that a car had other than the defects complained of, and that such other defects could not be conveniently repaired at Auburn or Centralia, cannot be considered as an excuse for not repairing the defective equipment in question; provided you find it could have been repaired at Auburn or Centralia.

In a case of this character, the plaintiff, having alleged that the defendant is guilty of violating the

so-called Safety Appliance Act of the United States and the amendments thereto, it has, as I have or will instruct you, the burden of proof and it does not devolve upon the defendant to affirmatively prove the cars referred to in the several causes of action were in good repair in the particulars as alleged, but if the plaintiff has failed to establish, by a fair preponderance of the evidence as to any of the causes of action in its complaint that the car therein referred to was permitted to be hauled on the defendant's line in violation of the section of the Safety Appliance Act referred to in such cause of action, then your verdict as to such cause or causes of action will be for the defendant.

By its fourth cause of action the Government contends that the hand brake on the car therein described was fouled by the lading. The burden is upon [299—264] the plaintiff to show that this brake was fouled at the time of the movement of this car from the Auburn yards of the defendant.

In the causes of action numbered 1 and 11, the Government alleges the hand holds on the cars therein referred to were bent and when so bent were moved by the defendant as a common carrier in violation of the Safety Appliance Act. With reference to these two causes of action it devolves upon the Government to show by a preponderance of the evidence not only that the hand holds on these cars were bent and were so bent when the train moved from the Auburn yards, but the Government must also show that they were so bent as not to allow a

minimum clearance of two inches from the outside of the car.

Gentlemen, you don't want to confuse cause of action one and cause of action eleven with cause of action thirteen. In cause of action thirteen it is averred that the hand hold was fouled by the lading. In causes of action one and eleven the hand hold was alleged to have been so bent as not to leave a minimum clearance of two inches.

In cause of action thirteen if the hand hold was so near flush with the deck of the car that it was fouled by the logs, that would also be a violation.

By its thirteenth cause of action the Government has alleged a violation of the same Act that the hand hold on the car therein referred to was fouled by the lading, and the burden is likewise upon the Government to prove that the lading did so foul, cover up or interfere [300—265] with the hand hold on the car therein referred to, and that the car was moved out of the Centralia yards of the Northern Pacific in such condition.

By its tenth cause of action the Government alleges that the second tread from the top of the side ladder upon the "B" end of the car therein described was bent so as to allow a minimum clearance of less than two inches, and I instruct you that in passing upon this cause of action the burden is likewise upon the Government to show not only that the second tread from the top of the ladder on the coal car was bent and that it moved out of the Auburn yards of the defendant in such condition, but it must also show by a fair preponderance of

the evidence that at the time it did so move out of the Auburn yards.

By its eighth cause of action the Government has alleged that in the violation of the Act of Congress therein referred to, the defendant moved its own freight car from its Auburn yard with the hand brake wheel missing. The defendant admits that this particular freight car, being its own car No. 67105, was in defective condition and alleges that the same was being transported empty to Renton for the purpose of being placed in repair, and I instruct you that under the Act of Congress which is the foundation of the several causes of action in the plaintiff's complaint, it is provided that where railroad cars have become defective or insecure while such cars are being used by a carrier on its own line railroad that then such car after the discovery of such defect may be hauled from [301—266] the place where it was first discovered to be defective or insecure to the nearest available point where such car can be repaired; if such movement is necessary to make such repairs and such repairs cannot be made except at such repair point, that this can be done without liability for the penalties imposed under the terms of such act. It is for you to determine under the evidence whether, under the existing conditions and circumstances surrounding the defendant's work at Auburn yards, it was necessary to haul this car beyond Auburn and to Renton, if it was so hauled, for the purpose of causing it to be repaired, and by "necessary" I do not mean that you must find that it was impossible to repair

this car at Auburn, but if you believe that the only practicable method, under the circumstances and conditions that existed at the time, required that such car should be taken from Auburn to Renton for the purpose of being repaired and that Renton was, under such circumstances, the nearest available repair point for the purpose of making repairs such as were needed, then I instruct you that the movement thereof by defendant for such purpose was not a violation of the law, and if you so find, your verdict should be for the defendant on this cause of action.

The Government must show by a preponderance of the evidence that the cars were defective in the particulars as pointed out in the several causes of action and at the time were actually being moved over a part of defendant's railroad used as a part of a [302—267] highway of interstate commerce, and unless the Government has so proven,—well, there is no dispute about it being a part of a highway used in interstate commerce.

If when said cars did actually move out of such yards and on the track referred to in the evidence the defects, if any, theretofore existing, had been remedied so as to comply with the Acts of Congress as pleaded and the regulations issued pursuant thereto, then it would be your duty to find upon such causes of action for the defendant; and if there is no preponderance of the evidence showing that they moved out on the line unrepaired, your verdict, as to such, should be for the defendant.

It is alleged, and it is an admitted fact, that the defendant is an interstate carrier of freight and passengers for hire and as such it was its duty, as a matter of law, during the period referred to in the several causes of action herein, to use every reasonable effort to perform its duties as a common carrier of freight and passengers. The defendant by its answer has alleged that at said period and without fault on its part, certain of its employees had left its service in protest against certain orders and directions made by the United States Labor Board, and that among such employees were its car inspectors and car repairers and that in order to perform its duty to the public, it was, pending its ability to obtain other employees, necessary that it use many of its other officers and employees for such purpose and that by reason of the circumstances and conditions surrounding the withdrawal [303—268] of such employees it did not have available the repair facilities that it would have otherwise had, but that it did make all repairs necessary to comply with the Act of Congress referred to and the regulations issued pursuant thereto as alleged in the several causes of action herein, and I instruct you that it was the duty of the defendant railway company to use its best efforts to keep the commerce of the country moving and in determining the disputed questions of fact in this case that you have a right to take into consideration the surrounding circumstances and conditions as they existed at the times alleged in the complaint herein in so far as the same have been established by the evidence. While the

fact of such withdrawal of certain of its employees from its service would not authorize it to violate the Act of Congress and the regulations issued pursuant thereto under which this action is brought, you would be authorized in considering the evidence to take into consideration such surrounding conditions for the purpose of determining the issues submitted to you, and the evidence in connection therewith.

You can understand, gentlemen, that the fact that the defendant company is not permitted to take cars out of one repair point unrepaired on its line,—defective cars, unrepaired,—there is an implication and it is practically recognized in this suit, that the defendant or any other railroad so situated should inspect its cars before they left the terminal. Now, there is no provision, and it would be unreasonable to [304—269] require, that that inspection should be identical with the departure of the train. If the inspection is made within a reasonable time before the train leaves and the company—the defendant,—has no reason to apprehend that there is any movement of the train or that it is subjected to any condition that is going to put it out of repair after inspection before it has left, if mischievous individuals for any reason after that inspection inflict defects or damage upon the cars that result in penalty defects, the company would not be liable, if it did not discover them until it was out on the line, unless the circumstances were such as to render them so glaring that they could not be overlooked in the exercise of that high degree of care to which

they are bound by the Act. After the inspection, if it is made a reasonable time before the departure of the train, the train should be considered as upon the line, and the defendant would not become liable if it exercised that degree of care that I have indicated until it did discover the defects, when it would then again be its duty to repair wherever found if they could be repaired there; if they could not be repaired, then to take them to the nearest available repair point and remedy the defects.

You are in this case, as in every case where questions of fact are submitted to you, the sole and exclusive judges of every question of fact, of the weight of the evidence, and the credibility of the witnesses. In weighing the evidence and measuring the credit to be given to the different witnesses, you should take [305—270] into account their appearance, conduct and demeanor in giving their testimony, taking into account the reasonableness of their testimony in view of all the circumstances, whether it appears probable and likely, or whether it appears improbable. You are to take into account the situation in which they are placed as enabling them to know and see the things they claim to have seen; as one witness may have been more favorably situated as enabling him to see and know what had happened and what existed than another one who was just as anxious to tell you the truth. You are also to take into account whether the testimony of any witness has been corroborated where you would expect it to be corroborated if true, or whether it has been contradicted by other evidence in the case. On this

question of corroboration, you will remember, Mr. Winders argued to you that they were unable to corroborate in some respects their contention that these defects did not exist, because they were unable to keep the records that they would have kept but for the strike. If you would expect corroboration ordinarily from that quarter, you will take the want of corroboration into consideration along with the explanation that has been made, provided that explanation is supported by evidence. You will also take into account the interest that any witness may have been shown to have in the case, either as shown by the manner in which he gave his testimony or by his relation to the case, or anything that is shown by the evidence in relation to the feeling engendered by the strike. [306—271]

The COURT.—Is there anything further? If either side desires to take exceptions, now is the time to take them.

Mr. LIST.—If the Court please, the Government desires to except to that part,—the first part,—of the Court's charge wherein it is charged that the strike may be considered in connection with Auburn or Centralia ceasing to be a repair point.

Which part of said charge reads as follows:

There has been considerable said in the evidence and in the argument regarding the effect of the strike. You are authorized to take what the evidence has shown regarding this strike into account in determining whether the movement was necessary for the repair of the cars and whether Auburn and Centralia were available repair points for the pur-

pose of making the repairs in the matters that are claimed to have been defective. You can readily comprehend that in establishing a railroad every station does not have to be a repair point for all purposes or for the purpose of repairing all kinds of defects. If the railroad had established at division stations and other points facilities for making repairs, and the strike came along and rendered some of them unavailable, they would cease to be available repair points by reason of the strike; that is, it would not only be necessary to have tracks and shops and machinery and tools to effect repairs, but it would be necessary to have men to operate those shops, tools, equipment, and machinery; and if the strike assumed such proportions that they could not get men at those particular points to work because of the friction growing out of the strike, it might be concluded, if the evidence was sufficient, that they had ceased to be available repair points, and it would not be a violation of this law to move a car to a repair point and remedy the defects where that condition did not exist, or was not so acute, or where the friction was not so great.

Mr. LIST (continuing.) Second, I desire to except to that part of the Court's instructions wherein the jury were instructed that they may consider the sympathies of the men, as being indefinite and uncertain as to what [307—272] men were meant. It is uncertain whether the Court meant Government inspectors or the officials making these repairs or the outsiders or the men that went on the strike.

(Said part of said charge reads as follows:)

A strike, as you all know, and all of us know, as a matter of common knowledge, tends to array men on the two sides of the question. They have their sympathizers, and when their sympathy is aroused it can affect their judgment and can affect their powers of observation. A bent brake staff that would not be a serious matter sometimes, if men get excited and are sympathizing with one side or the other, it might be magnified and might be minimized. It works both ways.

This quoted portion of the charge was not read at the time of taking the exception but the portion of the charge referred to is the exception and afterward inserted in preparing the bill of exceptions.

The COURT.—I don't remember the connection in which that was used. What connection was that used in?

Mr. WINDERS.—I think your Honor used that in connection with telling the jury that we all know that when a strike takes place people become more or less excited, and one fellow might see a brake staff very much bent when under other conditions he would not notice it.

Mr. LIST.—I desire to take exception to that part of the Court's charge in which it is stated that the inspection may be within a reasonable time before the departure of the train, and that if mischievous individuals make an appliance defective, the company would not be liable if the company did not discover the defect until after the train got on the line. I desire further to except to that part of the Court's charge wherein the Court charged that a

train is to be considered as being on the line after a reasonable [308—273] time following the inspection.

Said part of said charge reads as follows:

After the inspection, if it is made a reasonable time before the departure of the train, the train should be considered as upon the line, and the defendant would not become liable if it exercised that degree of care that I have indicated until it did discover the defects, when it would then again be its duty to repair wherever found if they could be repaired there; if they could not be repaired, then to take them to the nearest available repair point and remedy the defects.

Mr. LIST (continuing.) I also desire to except to the refusal of the Court to instruct as requested by the plaintiff in its request No. 1 as to each of the eighteen causes of action, and also except to the action of the Court in directing a verdict for the defendant on the eighteenth cause of action.

The COURT.—Exceptions allowed.

Mr. LIST.—I also desire to except to the refusal of the Court to give the following numbered requests made by the plaintiff,—that is a separate exception as to each one; No. 2, No. 5, No. 8, No. 9, No. 10, No. 12, No. 13, No. 14 and No. 15.

(Said requests herein referred to read as follows:)

1. The plaintiff requests the Court to direct a verdict in its favor on each of the eighteen causes of action, this motion to apply separately as to each cause of action.

2. In the event that Request No. 1 is refused as to any cause of action, plaintiff requests the Court to instruct the jury as follows with respect to such cause of action.

3. If the jury believes, from a fair preponderance of the evidence, that any car was hauled from Auburn [309—274] or Centralia, in the condition alleged in the Government's complaint, its verdict should be for the Government on any such cause of action.

8. It is no defense for the defendant to say that because of a strike of some of its employees it was unable to secure competent men to inspect and repair the cars involved in this case.

9. The provisions of the safety appliance acts are of such a nature that they cannot be ignored, or set aside, by a carrier on the ground that a strike has interfered with its operations. But the safety of other employees, those who operate trains, as well as the traveling public, is to be placed above the question of inconvenience to the carrier of keeping its equipment in repair.

10. The uncoupling apparatus on each car must be operative of its own mechanism, and it is no defense to say that even if a car has a defective coupler it can be uncoupled from the adjoining car by means of the uncoupling lever on such adjoining car.

12. In order to comply with the spirit of the law, the defendant cannot establish a division terminal and make up trains at such terminal, and haul in such trains, cars with defective safety appliances,

such as those involved in this case. Therefore, it is no defense to say that the defendant, owing to a shortage of inspectors and repairmen at Auburn, or Centralia, hauled any of the cars from these points, in road service, in the condition complained of by the Government.

13. As to each of the cars hauled from Auburn or Centralia the jury must return a verdict for the Government unless the defendant has shown:

1st. That such car had been properly equipped with the appliance prescribed by the Act of Congress and the orders of the Interstate Commerce Commission.

2d. That the defective equipment became defective while being used by the defendant on its line of railroad.

3d. That the defendant, through its officers or agents, had discovered the defects.

4th. That the defendant was hauling the car for the sole purpose of putting it in repair, and that such repairs could not be made at Auburn or Centralia. [310—275]

5. That such car was actually repaired at the nearest available point from Auburn or Centralia.

14. The jury must not return a verdict for the defendant on any cause of action, unless it appears that the defective cars were hauled by themselves for repair, or hauled in what is known as a hospital train. Good order and bad order cars cannot be assembled together in a train, and hauled from a terminal, some for repair and some in commercial ser-

vice. And the burden is on the defendant to show that this was not done.

15. The fact that a car had other than the defects complained of, and that such other defects could not be conveniently repaired at Auburn or Centralia, cannot be considered as an excuse for not repairing the defective equipment in question.

The COURT.—Exceptions allowed.

Mr. LIST.—I desire also to except to the Court's granting the following requests for instructions which were made by the defendant: Request for instruction No. 8.

The COURT.—I don't think I granted any of them as they were made exactly.

Mr. LIST.—Well, substantially as made. I assume that any changes that were made will show on the request. I think your Honor followed the request so that we can identify it by the number. In addition to excepting to Request No. 8 of the defendant, which I have already referred to, I except to the giving by the court of requested instruction No. 10 and No. 11. (Said requests as given read as follows:)

8. By its eighth cause of action the Government has alleged that in the violation of the Act of Congress therein referred to, the defendant moved its own freight car from its Auburn yard with the hand brake wheel missing. The defendant admits [311—276] that this particular freight car, being its own car No. 67105, was in a defective condition and alleges that the same was being transported empty to Renton for the purpose of being placed in repair, and I instruct you that under the

Act of Congress which is the foundation of the several causes of action in the plaintiff's complaint, it is provided that where railroad cars have become defective or insecure while such cars are being used by a carrier on its own line railroad that then such car after the discovery of such defect may be hauled from the place where it was first discovered to be defective or insecure to the nearest available point where such car can be repaired; if such movement is necessary to make such repairs and such repairs cannot be made except at such repair point, that this can be done without liability for the penalties imposed under the terms of such act. It is for you to determine under the evidence whether, under the existing conditions and circumstances surrounding the defendant's work at Auburn yards, it was necessary to haul this car beyond Auburn and to Renton, if it was so hauled, for the purpose of causing it to be repaired, and by "necessary" I do not mean that you must find that it was impossible to repair this car at Auburn, but if you believe that the only practicable method, under the circumstances and conditions that existed at the time, required that such car should be taken from Auburn to Renton for the purpose of being repaired and that Renton was, under such circumstances, the nearest available repair point for the purpose of making repairs such as were needed, then I instruct you that the movement thereof by the defendant for such purpose was not a violation of the law, and if you so find, your verdict should be for the defendant on this cause of action.

11. It is alleged, and it is an admitted fact, that the defendant is an interstate carrier of freight and passengers for hire and as such it was its duty, as a matter of law, during the period referred to in the several causes of action herein, to use every reasonable effort to perform its duties as a common carrier of freight and passengers. The defendant by its answer has alleged that at said period and without fault on its part, certain of its employees had left its service in protest against certain orders and directions made by the United States Labor Board, and that among such employees were its car inspectors and car repairers and that in order to perform its duty to the public, it was, pending its ability to obtain other employees, necessary that it use many of its other officers and employees for such purpose and that by reason of the circumstances and conditions surrounding the withdrawal of such employees it did not have [312—277] available the repair facilities that it would have otherwise had, but that it did make all repairs necessary to comply with the Act of Congress referred to and the regulations issued pursuant thereto as alleged in the several causes of action herein, and I instruct you that it was the duty of the defendant railway company to use its best efforts to keep the commerce of the country moving and in determining the disputed questions of fact in this case that you have a right to take into consideration the surrounding circumstances and conditions as they existed at the times alleged in the complaint herein in so far as the same have been established by the evidence. While the fact of such

withdrawal of certain of its employees from its service would not authorize it to violate the Act of Congress and the regulations issued pursuant thereto under which this action is brought, you would be authorized in considering the evidence to take into consideration such surrounding conditions for the purpose of determining the issues submitted to you, and the evidence in connection therewith.

The COURT.—I instruct the jury that any comments that the Court made on the evidence or facts in the case,—that as to those,—while the Court is authorized to comment on the evidence,—you are advised and the Court instructs you that you yourself are the sole and exclusive judges of every question of fact in the case, as I told you in my last instruction. You will yield only such weight to remarks of the Court as touching the evidence as you would consider its worth as a matter of argument as you might hear it from counsel, but not be controlled by it; where your judgment on matters of evidence differs from that of counsel or of Court, it is your duty to follow your own judgment.

Any further exceptions?

Mr. WINDERS.—I have no exceptions, your Honor. [313—278]

The COURT.—Is a sealed verdict agreed to?

(Both sides agreed to a sealed verdict.)

The COURT.—There are seventeen blanks left for you to fill in by writing in the word “is” or “not.” If you find for the plaintiff, you will write in the word “is,” making it read “Is guilty.” If you find for the defendant, you will write in the word “not,” making it read “not guilty.”

Mr. WINDERS.—I would like to say that if the jury does return a verdict, it is not necessary to call me up or to poll the jury.

IT IS HEREBY STIPULATED AND AGREED by the parties in the above-numbered and styled cause that the foregoing bill of exceptions contains all the evidence offered and received at the trial of said cause, and all proceedings at the trial thereof, together with the rulings of the Court and its instructions to the jury, and that said bill of exceptions may be settled, allowed and filed.

THOS. P. REVELLE,
United States Attorney.

C. E. HUGHES,
Assistant United States Attorney.

M. C. LIST,
Special Assistant to the United States Attorney.

O. K.—C. H. WINDERS,
Atty. Defdt. N. P. Ry.

Pursuant to the foregoing stipulation, this bill of exceptions is hereby approved, allowed, and the same is ordered filed.

July 17, 1923.

EDWARD E. CUSHMAN,
District Judge. [314—279]

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 18, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [315]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 7138.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE NORTHERN PACIFIC RAILWAY COM-
PANY,

Defendant.

Verdict.

We, the jury in the above-entitled cause, find the defendant Northern Pacific Railway Company not guilty, as charged in Count I of the complaint herein; and further find said defendant not guilty, as charged in Count II of the complaint herein; and further find said defendant not guilty, as charged in Count III of the complaint herein; and further find the said defendant not guilty, as charged in Count IV of the complaint herein; and further find the said defendant not guilty, as charged in Count V of the complaint herein; and further find the said defendant not guilty, as charged in Count VI of the complaint herein; and further find the said defendant not guilty, as charged in Count VII of the complaint herein; and further find the said defendant not guilty, as charged in Count VIII of the complaint herein; and further find the said defendant not guilty, as charged in Count IX of the complaint herein; and

further find said defendant not guilty, as charged in Count X of the complaint herein; and further find said defendant not guilty, as charged in Count XI of the complaint herein; and further [316] find said defendant not guilty, as charged in Count XII of the complaint herein; and further find said defendant not guilty, as charged in Count XIII of the complaint herein; and further find said defendant not guilty, as charged in Count XIV of the complaint herein; and further find said defendant not guilty, as charged in Count XV of the complaint herein; and further find said defendant not guilty, as charged in Count XVI of the complaint herein; and further find said defendant not guilty, as charged in Count XVII of the complaint herein; and further find said defendant not guilty, as charged in Count XVIII of the complaint herein.

J. R. PIDDUCK,
Foreman.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 21, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [317]

In the United States District Court for the Western
District of Washington, Northern Division.

No. 7138.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY,
a Corporation,

Defendant.

Judgment.

BE IT REMEMBERED this cause came on duly and regularly for trial on the 19th day of June, 1923, upon the complaint of the plaintiff, the answer thereto of the defendant, and the reply to the affirmative matter in such answer on the part of the plaintiff; plaintiff appearing by C. E. Hughes, Assistant United States District Attorney, and M. C. List, Assistant Attorney General of the United States, and the defendant appearing by its attorney, C. H. Winders, and a jury having been duly and regularly empaneled to try said cause, and the plaintiff having introduced its evidence in support of the eighteen causes of action set forth in its complaint, and the defendant having introduced its evidence and rested, plaintiff having introduced its evidence in rebuttal, and both parties having rested, the cause was thereafter, under appropriate instructions as to the law, submitted to the jury for its determination and decision and the jury there-

after on the 21st day of June, 1923, having returned into court with its verdict wherein they found the defendant not guilty on each of the eighteen causes of action set forth in the plaintiff's complaint, said verdict being regular in form, it was regularly received and filed herein. [318]

NOW THEN, upon motion of the defendant for a judgment in its favor upon each of the eighteen causes of action set forth in the plaintiff's complaint, upon such verdict,

IT IS NOW by the Court ORDERED, ADJUDGED AND DECREED that the plaintiff take nothing by reason of its complaint herein and the eighteen causes of action therein set forth, and that the defendant go hence without day as to the plaintiff's complaint and as to each of the eighteen causes of action therein set forth, and that this action, and each cause of action therein set forth, be and it is hereby dismissed.

To all of which the plaintiff excepts and its exception is allowed.

DONE IN OPEN COURT this 26th day of June, 1923.

EDWARD E. CUSHMAN,
Judge.

Received a copy of the within judgment this 25 day of June, 1923.

THOS. P. REVELLE,
U. S. Atty.,
Attorney for Plaintiff.
F. T. S.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 26, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [319]

United States District Court, Western District of
Washington, Northern Division.

No. 7138.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY,
a Corporation,

Defendant.

Plaintiff's Assignments of Error.

Comes now the United States of America, plaintiff herein, and files the following assignments of error, upon which it will rely in its prosecution of the writ of error in the above-entitled cause:

(1) The Court erred in overruling plaintiff's demurrer to the affirmative defense set forth in defendant's answer.

(2) The Court erred in overruling plaintiff's motion to strike from the defendant's answer the affirmative defense therein set forth.

(3) The Court erred in overruling plaintiff's objection to the following question asked of the witness Winter by counsel for the defendant and the answer thereto:

Q. Did you ever say anything to Mr. Burnham or any of the other gentlemen there,—Mr. Burnham or Mr. Crawford or Mr. Allmain,—this gentleman here,—or Mr. Alsip back here, at Centralia, about the cars you are complaining about in this case?

A. No, sir.

(4) The Court erred in refusing to allow the witness Winter to answer the following question asked by counsel for plaintiff:

Q. State whether or not you actually made any inspection of any other cars on this particular occasion and notified any officials there of the defective equipment? [320]

(5) The Court erred in refusing to allow the witness Winter to answer the following question asked by counsel for plaintiff:

Q. It has been suggested here that there was a strike on and at that time your conduct in reporting these cases for prosecution was not in a spirit of fairness. The strike went into effect in July, I believe. How long was it after that before you reported any cases against the Northern Pacific for prosecution?

(6) The Court erred in refusing to allow the witness Winter to answer the following question asked by counsel for plaintiff:

Q. Mr. Winter, Mr. Winders asked you if it was not true that to your knowledge some of the men were not loyal to the Northern Pacific and pointed out defects to you upon which you based your prosecution. I am going to ask you to state whether or not it is true that the employees of the

Northern Pacific did not accuse you of being too fair to the Northern Pacific?

(7) The Court erred in overruling plaintiff's objection to the following questions asked of the witness Weeks by counsel for defendant and the answer thereto:

Q. I mean just what I said. Was the company laboring any burden at that time in the Centralia yard? Any unusual burden?

Q. Was there a strike on in the Centralia yard?

Q. Was there a strike on? A. Yes, sir.

(8) The Court erred in overruling plaintiff's objection to the following questions asked of the witness Weeks by counsel for defendant and the answer thereto:

Q. Isn't it a fact that your attention was called to the fact that in the Centralia yard, the Auburn yard, and other yards of the Northern Pacific, after a train was made up and defects were repaired, either the strikers or sympathizers with the strikers would come along, cut the air hose, and knock off grabirons— [321]

Q. You have testified that you had learned that there was a strike down at Centralia. I will ask you if your attention was not called, both at Centralia and Auburn,—and if you were in the Tacoma yard, and in the Ellensburg Northern Pacific yard, and in Spokane, that after trains had been made up and the road engine had been attached, either the strikers or their sympathizers came along and cut the air hose, damaged the angle docks, and

otherwise attempted to render the equipment defective. A. I have been told that.

(9) The Court erred in overruling plaintiff's objection to the following question asked of the witness Weeks by counsel for defendant and the answer thereto:

Q. Is it your opinion, Mr. Weeks, knowing the conditions you did know at that time, that it would have been reasonably safe for any man,—official or new employees of the Northern Pacific,—to go out on that transfer between the street-car track and Whatcom Avenue and attempt at that time to have shimmed up or repaired this drawbar?

A. It would have been as safe there as any other place on the road, in my opinion.

(10) The Court erred in refusing to allow the plaintiff to prove by the witness Winter that prior to the time involved in this case he had frequently made reports to the Interstate Commerce Commission of the Northern Pacific flat cars being so loaded with logs as to foul the end hand hold; that at the time of making such reports the Car Foreman and Inspector of Equipment of the defendant also took the numbers of such cars in his presence.

(11) The Court erred in refusing to allow the plaintiff to prove by the witness Winter that on the morning of June 20, 1923, in company with Mr. Pitts, another inspector of the Interstate Commerce Commission, and a Mr. Hazen, defendant's Chief Car Inspector at Auburn, they made an inspection of a number of flat cars similar to the one

involved in this case, and that the bunks on same were only four inches in height. [322]

(12) The Court erred in refusing to allow plaintiff to prove by the witness Winter, that at the same time and place and in company with the same persons mentioned in Assignment of Error No. 11 they found a car similar to the one involved in this case, loaded with logs; that there was just practically three inches clearance between the logs and the handhold, and that if the logs shifted as much as one inch, the logs on that car would have completely fouled the handhold on the end of the car, and that this fact was so admitted by defendant's Chief Car Inspector.

(13) The Court erred in overruling plaintiff's objections to the following question asked of the witness Crosby by counsel for defendant and the answer thereto:

Q. I wish you would state to the jury briefly and clearly so they can hear you the conditions confronting the operations of the Northern Pacific so far as inspectors and car repairs were concerned, from the 1st of July up to the 2d of September, with particular reference to Auburn and Centralia.

A. On the first of July, as practically everyone knows, and of course railroad men better than anyone else, the railroad employees right down to the wipers went out,—I think in Seattle a few wipers remained. So far as the car repairers and machinists and everything of that kind is concerned they walked off the job. We had instructions not to hire any outside men, and as a result of that it

devolved on the officers and men,—the few who remained,—of course the foreman,—car foreman,—in practically all cases remained to work. They did at Auburn and at points where Mr. Winter has mentioned. Besides the foreman, the work was largely done by other officers of the railroad. That condition continued up until July 18, when we started to hire a few men,—the best, of course, that we could secure. But, as you all know, the men that we could hire under those conditions, were not like the men that ordinarily do that work. However, we did get some good men after a while. We struggled along and did the best we could with what we had to do it with. The men worked long hours. The men who were accustomed to office work worked night and day, and some of them worked 22 or 23 or 24 hours a day; couldn't work [323] any more than that. We worked along in that way. Now, I have heard some matters brought out here in connection with the inspection of trains that really seemed inconsistent to me, in that the cars were not inspected in the way that they were ordinarily inspected when we have the regular organized force of inspectors. That was true. We did not have the men to do it. The cars were assembled in the train, and they were inspected by these officers that I have mentioned. Sometimes prior to the train moving away,—as has been brought out here,—the hose were either severed,—generally I will say they were stabbed with a knife blade, not cut in two,—just a knife blade inserted,—and in one case we had 22 hose cut before we got out of Auburn. In other instances we had

to go around,—the hose were filled with waste,—both the air hose and the steam hose. The refrigerator-cars here in Seattle we had to set them on the steam track and connect them up with steam so as to keep those men from filling them up with waste, and other foreign substances. Taking the whole matter, it was a question of endurance so far as the Company was concerned. Everybody was working the constitutional limit. Every nerve was strained. There is no question about that. I don't know of anything that could have been done that was not done with the force available.

(14) The Court erred in overruling plaintiff's objections to the following question asked of the witness Crosby by counsel for defendant and the answer thereto:

Q. On the 31st of August, the evidence will show, on train leaving Auburn as was testified at 9:50,—as a matter of fact it registered out at ten,—he had on that twenty log cars in defective condition taking them to Renton to be repaired at the Renton car works. Did we at that time on the 31st of August have men available to put them in condition at Auburn?

A. I would say no. We did have men, but not sufficient.

(15) The Court erred in overruling plaintiff's objections to the following questions asked of the witness Crosby by counsel for defendant and the replies thereto:

Q. Now, Mr. Crosby, when was it that the Northern Pacific,—or was there any particular reason

why the Northern Pacific did not start to hire any men until about the 18th of August,—18th of July, I should say? [324]

A. Our purpose for not employing men was by reason of our having the hope, or an impression that the men would come to their senses and return to work. Our men who left the service did not do so because of any dissatisfaction that they had with the Northern Pacific. That is, they all gave me to understand that. I am pretty close to the working men.

Q. Was there any of these men went back East at that time, Mr. Crosby, or not?

A. The chairman of the different crafts. I don't know just how many of them went either to Chicago or Washington for the express purpose of making a separate agreement in so far as the Northern Pacific was concerned, and were refused by Mr. Jewell. I was looking up some letters on that. I did not have time before I left the office. We have it on record.

Q. It was not until after those men returned that you tried to hire outsiders?

A. I can't remember the date that they went down; I would not want to testify on that. I don't believe that we did.

(16) The Court erred in overruling plaintiff's objections to the following question asked of the witness Crosby by counsel for defendant and the reply thereto:

Q. Was the situation such in Seattle, Mr. Crosby, that you would have permitted any of the officials

of the Northern Pacific or any new employees of the Northern Pacific to attempt to make any repairs to cars on this transfer track along Whatcom Avenue, having the standpoint of the safety of the men and the safety of the equipment and the property in mind?

A. No, I would not expect men to work there. I never send men to do what I would not care to do myself. I would not care to work there myself.

(17) The Court erred in overruling plaintiff's objection to the following question asked of the witness McCullough by counsel for defendant and the answer thereto:

Q. On July 1st what were you doing?

A. On July 1st at 10:00 A. M. I was waiting to see what would happen. At 10:00 o'clock it did [325] happen. Everybody quit,—all the car repairers, inspectors taking care of the equipment at Seattle, Tacoma, and at Portland. I believe about two old men stayed to work at Tacoma. I believe one at Seattle. Then we made the necessary arrangements, we called in volunteers. We had them already consolidated. We got in touch with them and kept our King Street station working and getting our passenger trains out of town. That is the first thing that we did that afternoon. The next morning I got over into Auburn and Kent. I found the situation over in Auburn,—I went out there July 1st and I found the car foreman, and the bridge inspector, the only two men working in the yards inspecting trains.

(18) The Court erred in overruling plaintiff's objection to the following questions asked of the witness McCullough by counsel for defendant and the answers thereto:

Q. You were familiar with the conditions in Seattle and Auburn up to the 31st of August, were you, Mr. McCullough? A. Yes, sir.

Q. When was it that the company first started to employ new men?

A. We were directed to not do it, and I think that ban was lifted on either July 18th or 21st. I am not positive. I believe it was July 18th.

Q. Just tell the jury now up to August 31st what the conditions incident to and surrounding the operation of the Auburn yards were with reference to the inspection of trains and the making of repairs at that point, and in what way it was different from normal?

A. Under normal conditions and prior to July 1st, and at the present time there are four regular car inspectors working eight-hour shifts, and two or three other men doing light repairing and oiling and so forth. Probably somewhere between 20 and 25 men employed at Auburn inspecting cars and making light repairs and taking care of oiling boxes.

Q. When with reference to the cars being put on the train are these repairs made? A. Normally?

Q. Prior to the strike. And now. [326]

A. Most all the repairs were made on the repair track except small defects which inspectors would find.

Q. You are talking about during the strike period?

A. No, now.

(19) The Court erred in overruling plaintiff's objection to the following questions asked of the witness McCullough by counsel for defendant and the answers thereto:

Q. During this same period up to August 31st, what is the fact as to whether or not these train crews were keeping a pretty close eye on the equipment?

A. That was a fact that was well known and not disguised. They frequently used to tell me about it and try to run a bluff on me about having a large number of cars leaving in a defective condition. I asked them to give me the car numbers, and told them if they found any cars defective I would be very glad to have them show me. I told that to the chairman of the Brotherhood Committee.

Q. Would they sometimes hold up the trains?

A. Once in a while they would falter around there about something.

Q. Were they particular about refusing to take the train out if there were any defects?

A. Oh, yes. Not all of them. Certain men. We would be particularly careful to see that everything was fixed. They would still be trying to find fault.

Q. These questions that I am asking you are general questions. You did not see those particular cars yourself, did you?

A. You mean that the suit was brought on?

Q. Yes, sir.

A. No, sir. I might have seen them at other dates. [327]

(20) The Court erred in overruling plaintiff's objection to the following questions asked of the witness McCullough with respect to car No. 67105 and the answer thereto:

Q. That is the eighth cause of action. What was the condition of that car when it left Auburn?

Q. Why was it going to Renton?

A. For general repairs, together with twenty-three or twenty-four others just like it.

(21) The Court erred in overruling plaintiff's objection to the following question asked of the witness McCullough by counsel for defendant and the answer thereto:

Q. What efforts had you used toward getting men at Auburn for the purpose of keeping equipment in repair and keeping commerce passing through there moving?

A. After we were authorized to employ men, almost everything was done to secure them; through advertising, men personally sent to different places, —I think we sent one man to Los Angeles or San Francisco,—I don't know which,—men were shipped in from all parts of the country. We had an office open in the Arcade Building in Seattle. Every newspaper carried one or more advertisements. We would hire any man,—didn't care what he was,—to go out and get some of the work done.

(22) The Court erred in overruling plaintiff's objection to the following questions asked of the

witness McCullough by counsel for defendant and the answers thereto:

Q. Supt. McCullough, being familiar with the situation that existed in Seattle on the 31st day of August,—or rather on the 7th day of September,—would you say that it would be reasonable to have attempted to make repairs of any character upon that transfer track located, as it was, in the public street and not on the property of the company, and between the street-car track and the paved portion of Whatcom Avenue?

A. It would be very unsafe, unless the men doing the work were heavily guarded. [328]

Q. Would it, in your opinion, knowing the situation and the obligations of the company to the city and the officials of the city and the government,—would it have been countenanced by anyone exposing the men out there at that time for the making of repairs?

A. My impression is it would not?

Q. As a matter of fact, at that time the United States was trying to furnish protection, was it not?

A. Yes, sir, and we refrained from putting even inspectors out there. It was one of the last things that we would have done, because we did not want to put them there. We were afraid.

(23) The Court erred in overruling plaintiff's objection to the following question asked of the witness Crawford by counsel for defendant and the answer thereto:

Q. What was the situation out there around about the first of September? Just tell the jury

with reference to the work and with reference to the trains going out, and the conduct of the conductors,—of some of the conductors,—and brakemen in taking out their train. You were there. Tell them.

A. In the first place we were doing a very large volume of business. The Auburn terminal was as busy then as probably it ever was or ever may be again. The attitude of the trainmen was most critical. I mean by that that they departed from their regular path of duty to inspect and examine. I have seen a brakeman crawl under the cars to find a defect, a thing which they don't do ordinarily, and would refuse to do if they were told to do it ordinarily. So that, in addition to our inspection, which was close, we had the assistance in that way of the conductor and his three brakemen. And, as I say, they were most particular to find a defect. It was not always a defect which amounted to anything, but if it was anything they could kick about, they took the occasion to do so, and we either repaired the car without dispute or carded it "bad order" and had it sent out of the train. The inspection force consisted almost entirely of the officers of the company, and there was some interference from outsiders,—a great deal of interference from people who were apparently our employees,—in connection with the operation of the air brakes on the train and other matters pertaining to the cars. [329]

(24) The Court erred in overruling plaintiff's objection to the following questions asked of the

witness Burnham by counsel for defendant and the answers thereto:

Q. What was the attitude along about the 31st of August of the train crews with reference to taking out trains? Was it critical or otherwise?

A. They were very critical. As a matter of fact, the train crews generally did as much inspecting as we did. The intention was to delay the movement of trains as much as possible. That was the impression we gained,—the only impression that we could gain after what we saw they were doing.

Q. At that time were your trains being held up by these crews claiming something was wrong?

A. Yes, sir.

Q. Was that a common occurrence?

A. That was a common occurrence on train 930.

Q. That is this train that went out to Narco?

A. Yes, sir.

Q. Just tell the jury about what conditions were around there at that time, Mr. Burnham?

A. The other brotherhoods seemed to do everything that they could to help the cause of the striking shopmen. That is, they tried to make it appear that the inspection which was being made by the men that were there was not effective, and they even went so far as to cut the hose after we had,—I will have to explain that first before I get into that. The first thing we did, we asked the engineer to apply the air. Then we went along the train and made an inspection of the hose to see if there was any leaky hose or anything else that might appear. Then we asked the engineer to release the air. We would find in some cases that

after the air had been applied angle cocks had been turned, or sometimes if we happened to be in the center of the train,—a train of 75 cars,—some way or other the angle cocks at the rear of the train were opened up so the brakes were not effective. As a matter of fact, they hindered us in every way possible.

(25) The Court erred in overruling plaintiff's objection to the following question asked of the witness Alsip by counsel for defendant and the answer thereto: [330]

Q. What were the conditions on that date,—that is the surrounding conditions, as to—well, as to your safety at night, and what was being done to your equipment after you had it examined and attempted to repair it?

A. I think probably we had as much interference at Centralia as any other one place in the Northwest territory. First of all, Centralia is a notorious place, as you know. We were continually interfered with in making up our trains and inspecting our trains and connecting the air. Even after we had passed one of our trains and given the engineer the signal to set the air and release the air we have found and been notified in some cases of malicious acts on the part of unknown persons which resulted in defects such as we are talking about now,—cutting levers disconnected, air hose out or pulled apart, and in some instances the stirrups were bent off by the use of bars, same as we would use in straightening, and opening the angle cock to prevent our getting a full air pressure. And numerous other things

such as Mr. Crosby spoke of,—waste being placed in the house,—and the gaskets taken out,—and un-
numerous other things.

(26) The Court erred in overruling plaintiff's objection to the following questions asked of the witness Alsip by counsel for defendant and the answers thereto:

Q. I don't know whether I asked you or not, but how were you being treated along this time when things got very critical about the 2d of September by the train crews when taking out their trains? Were they particular about the condition of their equipment when it went out of Centralia?

A. They were giving the trains as good an inspection as we could possibly give them, and they had instructions from their various officers,—their organizations—to take records and report any cars that were not in shape and also to refuse to take them. In many cases they would delay the trains. I have seen trains in Centralia delayed as high as one hour waiting for some of us to come and make some minor repair or to have a car set out, and in some instances I have had to use this particular crew that was objecting to the condition of the car to make a set-out of the car, because the switch engines were not available. The situation,—the condition was very critical, especially at Centralia. That is borne out by not only the records but the news items during that time that we were not able to get help at Centralia, largely for the reason that Centralia had a notorious reputation as an I. W. W. center. While a great many other points were supplied [331] with help, we could not get men to go

to Centralia. When we did, we only dared to put them to work in the day time. That left Mr. Nixon and myself to work in the nights continuously. In fact, I was not released at Centralia until October 12th. I was continually in service from July 1st to October 12th. Only by the aid of my automobile we were able to keep up with the game.

Q. You knew the men that you were able to get?

A. I know we were having a great deal of difficulty to get any men to go to Centralia at that time by reason of the I. W. W. and other elements that seemed to infest that particular locality.

(27) The Court erred in refusing to allow the witness Weeks to answer the following questions asked by counsel for plaintiff:

Q. Mr. Weeks, some question has been brought into this case by some of the witnesses,—particularly Mr. Alsip. He said these cars were not equipped with hand holds on the end of the flat cars so that they could come up to less than two inches from the top of the floor. I am going to ask you to state if you recently made any inspections of any flat cars for the purpose of seeing whether they were equipped with hand holds that come up to less than two inches from the top of the floor.

Q. I want to make it a little more definite. I am going to ask the witness one more question. Mr. Weeks state whether or not yesterday morning you inspected a number of flat cars in the yards of the Northern Pacific for the purpose of

ascertaining whether or not the hand holds on the ends were applied at the top so that they could be fouled by lumber or logs.

(28) The Court erred in that part of its charge to the jury, wherein it said:

There has been considerable said in the evidence and in the argument regarding the effect of the strike. You are authorized to take what the evidence has shown regarding this strike into account in determining whether the movement was necessary for the repair of the cars and whether Auburn and Centralia were available repair points for the purpose of making the repairs in the matters that are claimed to have been defective. You can readily comprehend that in establishing a [332] railroad every station does not have to be a repair point for all purposes or for the purpose of repairing all kinds of defects. If the railroad had established at division stations and other points facilities for making repairs, and the strike came along and rendered some of them unavailable, they would cease to be available repair points by reason of the strike; that is, it would not only be necessary to have tracks and shops and machinery and tools to effect repairs, but it would be necessary to have men to operate those shops, tools, equipment, and machinery; and if the strike assumed such proportions that they could not get men at those particular points to work because of the friction growing out of the strike, it might be concluded, if the evidence was sufficient, that they had ceased

to be available repair points, and it would not be a violation of this law to move a car to a repair point and remedy the defects where that condition did not exist, or was not so acute, or where the friction was not so great.

(29) The Court erred in that part of its charge to the jury wherein it said:

A strike, as you all know, and all of us know, as a matter of common knowledge, tends to array men on the two sides of the question. They have their sympathizers, and when their sympathy is aroused it can affect their judgment and can affect their powers of observation. A bent brake staff that would not be a serious matter sometimes, if men get excited and are sympathizing with one side or the other, it might be magnified and might be minimized. It works both ways.

(30) The Court erred in that part of its charge to the jury wherein it said:

If the inspection is made within a reasonable time before the train leaves and the company,—the defendant,—has no reasonable apprehension that there is any movement of the train or that it is subjected to any condition that is going to put it out of repair after inspection before it has left, if mischievous individuals for any reason after that inspection inflict defects or damage upon the cars that result in penalty defects, the company would not be liable, if it did not discover them until it was out on the line, unless the circumstances were such as to render them so glaring that they could not be overlooked in the exercise of that

high degree of care to which they are bound by the Act.

(31) The Court erred in that part of its charge to the jury wherein it said:

After the inspection, it *it* is made a reasonable time before the departure of the train, the train [333] should be considered as upon the line, and and the defendant would not become liable if it exercised that degree of care that I have indicated until it did discover the defects, when it would then again be its duty to repair wherever found if they could be repaired there; if they could not be repaired, then to take them to the nearest available repair point and remedy the defects.

(32) The Court erred in refusing to direct the jury to return a verdict in favor of the plaintiff on the eighth cause of action, same being included in plaintiff's request for Instruction No. 1:

The Plaintiff requests the Court to direct a verdict in its favor on each of the 18 causes of action, this motion to apply separately as to each cause of action.

(33) The Court erred in refusing to direct the jury to return a verdict in favor of the plaintiff on the eighteenth cause of action, the same being included in plaintiff's request for Instruction No. 1:

The Plaintiff requests the Court to direct a verdict in its favor on each of the 18 causes of action, this motion to apply separately as to each cause of action.

(34) The Court erred in refusing to submit the eighteenth cause of action to the jury, as requested by the plaintiff by its request for Instruction No. 2:

In the event that Request No. 1 is refused as to any cause of action, Plaintiff requests the Court to instruct the jury as follows with respect to such cause of action:

(35) The Court erred in directing a verdict for the defendant on the 18th cause of action and entering a judgment thereon. [334]

(36) The Court erred in refusing to instruct the jury as follows, the same being plaintiff's request for Instruction No. 5:

If the jury believes, from a fair preponderance of the evidence, that any car was hauled by defendant from Auburn, or Centralia, in the condition alleged in the Government's complaint, its verdict should be for the Government on any such cause of action.

(37) The Court erred in refusing to instruct the jury as follows, the same being plaintiff's request for Instruction No. 8:

It is no defense for the defendant to say that because of a strike of some of its employees it was unable to secure competent men to inspect and repair the cars involved in this case.

(38) The Court erred in refusing to instruct the jury as follows, the same being plaintiff's request for Instruction No. 9:

The provisions of the safety appliance acts are of such nature that they cannot be ignored, or set

aside, by a carrier on the ground that a strike has interfered with its operations. But the safety of other employees, those who operate trains, as well as the traveling public, is to be placed above the question of inconvenience to the carrier of keeping its equipment in repair.

(39) The Court erred in refusing to instruct the jury as follows, the same being plaintiff's request for Instruction No. 12:

In order to comply with the spirit of the law, the defendant can not establish a division terminal and make up trains at such terminal and haul in such trains, cars with defective safety appliance, such as those involved in this case. Therefore, it is no defense to say that the defendant, owing to shortage of inspectors and repairmen at Auburn, or Centralia, hauled any of the cars from these points, in road service, in the condition complained of by the Government. [335]

(40) The Court erred in refusing to instruct the jury as follows, the same being plaintiff's request for Instruction No. 13:

As to each of the cars hauled from Auburn or Centralia the jury must return a verdict for the Government unless the defendant has shown:

1st. That such car had been properly equipped with the appliance prescribed by the Act of Congress and the Orders of the Interstate Commerce Commission.

2d. That the defective equipment became defective while being used by the defendant on its line of railroad.

3d. That the defendant, through its officers or agents, had discovered the defects.

4th. That the defendant was hauling the car for the sole purpose of putting it in repair, and that such repairs could not be made at Auburn or Centralia.

5th. That such car was actually repaired at the nearest available point from Auburn or Centralia.

(41) The Court erred in refusing to instruct the jury as follows, the same being plaintiff's request for Instruction No. 14:

The jury must not return a verdict for the defendant on any cause of action, unless it appears that the defective cars were hauled by themselves for repair, or hauled in what is known as a hospital train. Good order and bad order cars can not be assembled together in a train, and hauled from a terminal, some for repair and some in commercial service. And the burden is on the defendant to show that this was not done.

(42) The Court erred in refusing to instruct the jury as follows, the same being plaintiff's request for Instruction No. 15:

The fact that a car had other than the defects complained of, and that such other defects could not be conveniently repaired at Auburn or [336] Centralia, cannot be considered as an excuse for not repairing the defective equipment in question.

(43) The Court erred in instructing the jury as follows, the same being substantially defendant's request for Instruction No. 8.

By its eighth cause of action the Government has alleged that in the violation of the Act of Congress therein referred to, the defendant moved its own freight car from its Auburn yard with the hand brake wheel missing. The defendant admits that this particular freight car, being its own car No. 67105 was in a defective condition and alleges that the same was being transported empty to Benton for the purpose of being placed in repair, and I instruct you that under the Act of Congress which is the foundation of the several causes of action in the plaintiff's complaint, it is provided that where railroad cars have become defective or insecure while such cars are being used by a carrier on its own line railroad that then such car after the discovery of such defect may be hauled from the place where it was first discovered to be defective or insecure to the nearest available point where such car can be repaired; if such movement is necessary to make such repairs and such repairs cannot be made except at such repair point, that this can be done without liability for the penalties imposed under the terms of such act. It is for you to determine under the evidence whether, under the existing conditions and circumstances surrounding the defendant's work at Auburn yards, it was necessary to haul this car beyond Auburn and to Renton, if it was so hauled, for the purpose of causing it to be repaired, and by "necessary" I do not mean that you must find that it was impossible to repair this car at Auburn, but if you believe that the only

practicable method, under the circumstances and conditions that existed at the time, required that such car should be taken from Auburn to Renton for the purpose of being repaired and that Renton was, under such circumstances, the nearest available repair point for the purpose of making repairs such as were needed, then I instruct you that the movement thereof by the defendant for such purpose was not a violation of the law, and if you so find, your verdict should be for the defendant on this cause of action.

(44) The Court erred in instructing the jury as follows, the same being substantially defendant's request for Instruction No. 11. [337]

It is alleged, and it is an admitted fact, that the defendant is an interstate carrier of freight and passengers for hire and as such it was its duty, as a matter of law, during the period referred to in the several causes of action herein, to use every reasonable effort to perform its duties as a common carrier of freight and passengers. The defendant by its answer has alleged that at said period and without fault on its part, certain of its employees had left its service in protest against certain orders and directions made by the United States Labor Board, and that among such employees were its car inspectors and car repairers and that in order to perform its duty to the public, it was, pending its ability to obtain other employees, necessary that it use many of its other officers and employees for such purpose and that by reason of the circumstances and conditions

surrounding the withdrawal of such employees it did not have available the repair facilities that it would have otherwise had, but that it did make all repairs necessary to comply with the Act of Congress referred to and the regulations issued pursuant thereto as alleged in the several causes of action herein, and I instruct you that it was the duty of the defendant railway company to use its best efforts to keep the commerce of the country moving and in determining the disputed questions of fact in this case that you have a right to take into consideration the surrounding circumstances and conditions as they existed at the times alleged in the complaint herein in so far as the same have been established by the evidence. While the fact of such withdrawal of certain of its employees from its service would not authorize it to violate the Act of Congress and the regulations issued pursuant thereto under which this action is brought, you would be authorized in considering the evidence to take into consideration such surrounding conditions for the purpose of determining the issues submitted to you, and the evidence in connection therewith.

THOS. P. REVELLE,

United States Attorney.

C. E. HUGHES,

Assistant United States Attorney.

M. C. LIST,

Special Assistant to the United States Attorney.

Due and personal service of the within assignments of error admitted at Seattle, Washington, this 10th day of July, 1923.

GEO. T. REID,
C. H. WINDERS and
L. B. daPONTE,
Attorneys for Defendant.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 11, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [339]

United States District Court, Western District of
Washington, Northern Division.

No. 7138.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY,
Defendant.

**Stipulation Extending Time to and Including July
25, 1923, to File Bill of Exceptions.**

IT IS HEREBY STIPULATED by and between the parties hereto that the plaintiff may have and take up to and including the twenty-fifth day of July, 1923, in which to present and file for allowance herein its proposed bill of exceptions in the above-entitled cause.

Done in open court this 27th day of June, 1923.

THOS. P. REVELLE,

United States District Attorney.

C. E. HUGHES,

Assistant United States District Attorney,

Attorneys for Plaintiff.

C. H. WINDERS,

Attorney for Defendant.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 28, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [340]

United States District Court, Western District of
Washington, Northern Division.

No. 7138.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY,

Defendant.

**Order Extending Time to and Including July 25,
1923, to File Bill of Exceptions.**

Upon stipulation it is

ORDERED that the above named plaintiff may have and take to the twenty-fifth day of July, 1923, in which to serve and file for allowance herein its proposed bill of exceptions in the above-entitled cause.

Done in open court this 28th day of June, 1923.

EDWARD E. CUSHMAN,
United States Judge.

Approved: THOS. P. REVELLE,
Attorney for Plaintiff.
 C. H. WINDERS,
Attorney for Defendant.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 28, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [341]

United States District Court, Western District of
Washington, Northern Division.

No. 7138.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY CO.,
Defendant.

Petition for Writ of Error.

Comes now the plaintiff, United States of America, and respectfully states to the Court:

I.

That heretofore on the 21st day of June, 1923, the verdict was rendered in the above-entitled cause in favor of the defendant, the Northern Pacific Railway Company, and against the plaintiff, United States of America, and that thereafter on the 26th

day of June, 1923, judgment was entered in said action in accordance with said verdict.

II.

That errors were committed in the records and proceedings and the rendition of said judgment to the substantial damage of the plaintiff, the United States of America, petitioner herein; that your petitioner is desirous of obtaining a review of said proceedings and judgment in the United States Circuit Court of Appeals for the Ninth Circuit herein. [342]

III.

That your petitioner has filed herewith its assignments of error setting forth separately each error which your petitioner asserts appeared in said records, verdict, proceedings and judgment and which your petitioner intends to urge upon said review.

WHEREFORE your petitioner prays that a writ of error be issued herein and that the records, verdict, proceedings and judgment herein be reviewed by said United States Circuit Court of Appeals for the Ninth Circuit and that the said verdict be vacated and said judgment reversed, and that said cause be remanded to said District Court of the United States for the Western District of Washington, Northern Division for retrial.

THOS. P. REVELLE,

United States Attorney,

C. E. HUGHES,

Assistant United States Attorney,

M. C. LIST,

Special Assistant to the United States Attorney,

Attorneys for Plaintiff.

Dated at Seattle, Washington, July 17th, 1923.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 18, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [343]

United States District Court, Western District of
Washington, Northern Division.

No. 7138.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY CO.,

Defendant.

Order Allowing Writ of Error.

Now on this 12 day of July, 1923, this cause came on to be heard upon petition for the plaintiff, the United States of America, praying for the allowance of a writ of error herein, and it appearing to the Court that there has been filed with the Clerk of this Court plaintiff's assignments of error as setting forth separately and particularly errors which are asserted and intended to be urged, it is, therefore;

ORDERED by the Court that a writ of error be issued herein as provided by law to review the records, verdict, proceedings and judgment in this cause wherein judgment was rendered in favor of the defendant, the Northern Pacific Railway Company,

against the plaintiff, United States of America,
on the 26th day of June, 1923.

Done at Tacoma this 17th day of July, 1923.

EDWARD E. CUSHMAN,
United States District Judge.

O. K. as to form.—C. H. W. [344]

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 18, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [345]

United States District Court, Western District of
Washington, Northern Division.

No. 7138.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY CO.,

Defendant.

Election as to Printing Record.

The plaintiff in the above-entitled action hereby files in the office of the above named court a notice of its election to take and file in the United States Circuit Court of Appeals for the Ninth Circuit a transcript of the record on writ of error on said cause, to be printed under the supervision of the

Clerk of the last named Court under and pursuant to the rules of said Court.

THOS. P. REVELLE,
United States Attorney,
C. E. HUGHES,

Assistant United States Attorney,
M. C. LIST,

Special Assistant to the United States Attorney,
Attorneys for Plaintiff.

Dated 17th day of July, 1923. [346]

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 18, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [347]

United States District Court, Western District of
Washington, Northern Division.

No. 7138.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY,
Defendant.

Praeceptum for Transcript of Record.

The Clerk of the United States District Court at Seattle, Washington, in making up the record upon the writ of error in the above-entitled cause, is hereby directed to incorporate into the transcript

of the record on such writ of error the following only:

1. Plaintiff's complaint.
2. Defendant's answer.
3. Plaintiff's demurrer to defendant's answer.
4. Order of Court overruling plaintiff's demurrer to defendant's answer.
5. Plaintiff's reply.
6. Bill of exceptions and order allowing same.
7. Exhibits in the case.
8. Verdict.
9. Judgment entry.
10. Assignments of error.
11. Stipulation and order extending time for settlement of bill of exceptions.
12. Petition for writ of error.
13. Order allowing writ of error.
14. Writ of error.
15. Citation.
16. Clerk's return.
17. Election as to printing record.
18. This praecipe.

Attorneys for Plaintiff:

THOS. P. REVELLE,
United States Attorney.

C. E. HUGHES,
Assistant United States Attorney.

M. C. LIST,
Special Assistant United States Attorney.

C. H. WINDERS,
Attorney for Defendant. [348]

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 18, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [349]

United States District Court, Western District of
Washington, Northern Division.

No. 7138.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY CO.,

Defendant.

Order Re Transmission of Original Exhibits.

This matter having come on duly and regularly to be heard this 7th day of August, 1923, and it appearing to this Court that a stipulation has been entered into between the attorneys for plaintiff and defendant, it is therefore

ORDERED that the Clerk of the Court transmit to the Clerk of the Circuit Court of Appeals for the Ninth Circuit at San Francisco, the original exhibits introduced at the trial of this cause, in accordance with the above stipulation.

Dated this 7 day of August, 1923.

JEREMIAH NETERER,
United States District Judge.

O. K.—C. H. W.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Aug. 7, 1923. F. M. Harshberger, Clerk. [349½]

In the United States District Court for the Western District of Washington, Northern Division.

No. 7138.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY,
Defendant.

Certificate of Clerk U. S. District Court to Transcript of Record.

I, F. M. Harshberger, Clerk of the United States District Court for the Western District of Washington, do hereby certify this typewritten transcript of record, consisting of pages numbered from 1 to 349½ inclusive, to be a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing-entitled cause, as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the clerk of said District Court, and that the same constitute the record on return to writ of error herein, from the judgment of said United States District Court for the Western District of Washington to the United

States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses and costs incurred in my office on behalf of the plaintiff in error for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit: [350]

Clerk's fees (Sec. 828, R. S. U. S.) for making record, certificate or return, 889 folios at 15¢	\$ 133.35
Certificate of Clerk to transcript of record, 4 folios at 15¢60
Seal to said certificate20
Certificate of Clerk to original exhibits, 3 folios at 15¢45
Seal to said exhibits20
<hr/>	
Total	\$ 134.80

I hereby certify that the above cost for preparing and certifying record, amounting to \$134.80, will be included in my quarterly account to the Government, of fees and emoluments for the quarter ending September 30, 1923.

I further certify that I hereto attach and herewith transmit the original writ of error, and original citation issued in this cause.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court,

at Seattle, in said District, this 16th day of August, 1923.

[Seal] F. M. HARSHBERGER,
Clerk United States District Court, Western Dis-
trict of Washington. [351]

United States District Court, Western District of
Washington, Northern Division.

No. 7138.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY CO.,
Defendant.

Writ of Error and Clerk's Return.

United States of America,—ss.

The President of the United States of America,
To the Honorable the Judges of the District
Court of the United States, for the Western
District of Washington, Northern Division,
GREETING:

Because, in the records and proceedings, as also
in the rendition of the judgment of a plea which is
in the said District Court, before you, at the May
term, 1923, thereof, between the United States of
America, plaintiff, and Northern Pacific Railway
Company, defendant, manifest error hath hap-
pened to the great damage of the said United
States of America as by its complaint appears,

We, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the said record and proceedings aforesaid at the City of San Francisco, California, [352] and filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, on or before the 16th day of August, 1923, to the end that the record and proceedings aforesaid, being inspected, the United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable WILLIAM H. TAFT, Chief Justice of the United States, this 17th day of July, A. D. 1923.

Issued at office in Seattle, Washington, with the seal of the District Court of the United States for the Western District of Washington, Northern Division.

[Seal] F. M. HARSHBERGER,
Clerk, of the United States District Court, Western District of Washington.

Allowed by

EDWARD E. CUSHMAN,

Judge.

United States of America,
Western District of Washington,
Northern Division,—ss.

In obedience to the command of the above writ, I herewith transmit to the United States Circuit Court of Appeals for the Ninth Circuit, a duly certified transcript of the record and proceedings in the within entitled cause with all things concerning the same, in accordance with the praecipe for transcript filed herein.

In Witness Whereof, I hereunto subscribe my name and affix the seal of the District Court of the United States for the Western District of Washington, Northern Division.

[Seal] F. M. HARSHBERGER,
Clerk of the United States District Court, Western
District of Washington.

O. K. as to form—C. H. W. [353]

[Endorsed]: No. 7138. In the District Court of the United States for the Western District of Washington, Northern Division. United States of America, Plaintiff, vs. Northern Pacific Railway Co., Defendant. Writ of Error and Clerk's Return. Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 18, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy.

United States District Court, Western District of
Washington, Northern Division.

No. 7138.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

NORTHERN PACIFIC RAILROAD CO.,
Defendant.

Citation and Admission of Service.

United States of America, to the Northern Pacific
Railway Company, Defendant herein,
GREETING:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit at the city of San Francisco, California, thirty (30) days from and after the day this citation bears date, pursuant to writ of error filed in the Clerk's office of the United States District Court for the Western District of Washington, Northern Division, wherein the United States of America is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable EDWARD E. CUSHMAN, Judge of the United States District Court for

the Western District of Washington, this 17th day of July, 1923.

[Seal] EDWARD E. CUSHMAN,
Judge of the United States District Court. [354]

Due and personal service of the within citation is admitted this 18th day of July, 1923.

C. H. WINDERS.

Attorneys for Defendant and Defendant in Error. [355]

[Endorsed]: No. 7138. In the District Court of the United States for the Western District of Washington, Northern Division. United States of America, Plaintiff, vs. Northern Pacific Railway Co., Defendant. Citation and Admission of Service. Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 18, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy.

[Endorsed]: No. 4080. United States Circuit Court of Appeals for the Ninth Circuit. The United States of America, Plaintiff in Error, vs. Northern Pacific Railway Company, a Corporation, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

Filed August 20, 1923.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

United States District Court, Western District of
Washington, Northern Division.

No. 7138.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY,
Defendant.

**Order Extending Time to and Including September
1, 1923, to File Record and Docket Cause.**

It appearing to this Court that it is agreeable to the above-named parties that the time for filing record on writ of error be extended to September 1, 1923;

It is THEREFORE, ORDERED that the time for filing record on writ of error in the above-entitled cause in the Circuit Court of Appeals be, and it is hereby extended to September 1, 1923.

Done in open court this 15th day of August, 1923.

JEREMIAH NETERER,
Judge.

O. K.—C. H. W.

No. 7138. In the District Court of the United States for the Western District of Washington, Northern Division. United States of America, Plaintiff, vs. Northern Pacific Railway Company, Defendant. Order extending Time for Filing Rec-

ord on Writ of Error. Filed in the United States District Court, Western District of Washington, Northern Division. Aug. 15, 1923. F. M. Harshberger, Clerk. By _____, Deputy.

[Endorsed]: No. 4080. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 20, 1923. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

